

Independent Review of Consumer Protection Measures concerning Online Secondary Ticketing Facilities

**Presented to Parliament pursuant to section 94(3) of the
Consumer Rights Act 2015**

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Preface

Last Autumn, I was pleased to be invited by the Secretaries of State for Business, Innovation and Skills and for Culture, Media and Sport to lead the review into consumer protection measures relating to secondary ticketing facilities.

This is a complex sector. Whilst it is still possible to see people outside venues for popular events buying and selling tickets, the internet has fundamentally changed the ticketing environment over the last ten years. This has made it easier for people to apply for tickets in the first place but also enabled the resale market to thrive. Ticketing, especially pricing, is something that attracts great public interest and invokes strong opinions.

In compiling this report, I have striven to take an independent and objective view of the market. Although my remit has been consumer protection measures applying to the online resale of tickets, it was quickly apparent to me that to form views on this it was important to understand how the market as a whole worked.

I am grateful to those that responded to the Call for Evidence, including members of the public, industry representatives, event organisers, Parliamentarians and consumer representatives for sharing their views and highlighting issues. I also met with a wide range of experts from the sector who shared their knowledge and expertise and met with me or the review team or spoke with us on the phone. Some of these came together in two group meetings towards the beginning and end of my review.

I am also grateful to the civil servants who supported me on this project. Whilst they have been very useful in delivering the report, they have always been careful to ensure that my work was independent of Government.

Experts have helped me to access the people and information I have needed in order to ensure timely delivery of this report. I would stress, however, that the views and conclusions contained in this report are my own.

Professor Michael Waterson

Executive Summary

The Call for a Review

1. The Department for Business, Innovation and Skills (“BIS”) and the Department for Culture, Media and Sport (“DCMS”) jointly commissioned me to lead an independent review of consumer protection in the online ticket resale market (the secondary ticketing market). The aim of my review is to assess consumer protection measures applying to the re-sale of tickets for recreational, sporting or cultural events in the United Kingdom through online secondary ticketing facilities. My review fulfils the requirement under section 94 of the Consumer Rights Act 2015 (“CRA”),¹ to review consumer protection measures in relation to secondary ticketing and report within twelve months.

The Nature of the Event Ticketing Market

2. Tickets for an event happening in the UK can be bought either from a venue, an agent appointed by the event organiser or on the secondary ticketing market. Tickets can be physical, for example, paper tickets or they could be electronic, including machine-readable bar codes, credit or debit card entry, or wearable technology, such as wristbands or other wearable objects. Practically speaking, tickets are understood to provide a mechanism to demonstrate entitlement to access to an event.
3. Most tickets from primary agents will be sold at a fixed “face value” price plus any additional charges (booking fees, postage etc.) and valid tickets will normally guarantee entrance provided the identified terms and conditions (e.g. age restrictions) are complied with.

¹ <http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>

4. Tickets on the secondary ticketing market can be offered at any price, and may attract add-on costs such as commission fees or postage. In principle, they provide a similar right to entry to primary tickets although they may be constrained by terms or conditions relating to resale, including the possibility of cancellation in the event of resale. In practice, cancellation is unusual and most online purchasers of resold tickets experience no problem, unless the ticket is either counterfeit or has been already used. Problems are more likely to arise for the consumer if they buy from illegal websites that falsely appear to be a reputable source of tickets, taking people's money and then disappearing before the tickets are produced – these are illegal scams.

How the Market Works

5. Although the focus of my review is the online secondary ticketing market, the reality is that this market cannot be considered in isolation from the primary ticketing market. This is because many of the issues encountered by secondary market ticket buyers stem from issues in the primary market or are influenced by the interaction between the primary and secondary ticketing markets. It is, therefore, important to understand how the primary market works before examining the secondary ticketing market.

Primary Ticketing Market

6. The primary ticketing market is important to consider as it is the source of tickets that go onto the secondary market. Actions taken in the primary market will therefore influence what happens in the secondary market. Decisions taken on pricing will impact on the scope for resale and transaction and distributional measures (e.g. to resist botnet attacks) to affect the volume of tickets flowing to the secondary market. The ability of venues to check and enforce restrictions on entry will similarly affect the attractiveness to purchasers of tickets that go into the secondary market. In my view decisions on pricing cannot be sensibly taken independently from those on ticketing distribution and venue access.
7. Event organisers decide on the price or face value and the methods of ticket sale and distribution, as well as where the event will take place. Depending on anticipated demand, the organiser may choose to organise a ticket ballot, place tickets on open

sale or offer preferential access to groups that they approve of or those who have paid for it in some way (e.g. by using a particular credit card or phone). They will also control the terms and conditions of the ticket sales and when the tickets will be distributed.

8. There are differences between the ability of event organisers to control the primary market linked to their control over the venues. Typically sport and most of the arts tend to have more control over the venues, whereas music promoters (excluding festivals for now) are more dependent on deals with venue owners' terms. Whilst the promoter will influence ticketing strategy and its timing, venues normally insist on controlling distribution of tickets at events hosted there and typically take control of at least 60% of ticket sales. This diminishes the promoter's ability to control their ticket sales. It also leads to a number of primary agents being involved in a tour with some appointed by the promoter and others appointed by the venues. It is not in the business interest of a particular ticketing agent to advertise other official alternative sources of tickets beyond their own operation. These factors make it more complex for the consumer to navigate and understand where to buy primary tickets that meet their needs.

Restrictions on Ticket Resale

9. Event organisers may restrict the resale market for tickets in a number of ways. Firstly, typical terms and conditions on ticket sales will prevent the purchaser reselling the ticket, by stating expressly that a ticket must not be resold. Breaching this term risks the ticket being cancelled if the organiser can identify the vendor or the ticket. How successful this policy is will depend on the effort the organiser is willing to make (including checking identities at the door of the venue). Adele's management², for example, made a big effort to restrict resales for her recent UK tour by cancelling purchases from duplicate web, IP or postal addresses on tickets they controlled.
10. Secondly, although event organisers may allow for "returns", offering to resell purchasers' tickets to other customers, there will be no guarantee of a sale and there may be an administrative charge. There are risks for the organisers that this will undermine total sales, because they may have other tickets unsold that are inferior to

² <http://www.musicbusinessworldwide.com/team-adele-wage-war-on-ticket-touts-and-so-far-its-working/>

those being returned. This is not, therefore, commonly available.

11. Thirdly, organisers can restrict the volume of tickets that can be purchased. This might mean restricting sales to four or fewer tickets. However, it requires significant effort to identify and stop people buying multiple batches of four tickets and it is almost impossible if there is more than one primary agent.
12. The downside for the consumer facing these scenarios is that they may not be refunded by the event organiser in the event of a change of circumstances and may not be able to “transfer” the ticket to another individual, so they will therefore lose their money if the ticket can no longer be used. However, informal resale at ticket face value to an acquaintance may often be overlooked and accepted by event organisers.

Secondary Ticketing Market

13. Once the tickets are released onto the primary market, the event organiser’s ability to control the allocation process reduces substantially. At this stage, the secondary ticketing market takes over. Tickets purchased or received through the primary ticketing market can be offered to other would-be attendees by sellers at whatever prices they choose. Some will use the internet; others may place advertisements or offer them to personal friends or contacts. The internet and the large online secondary ticketing platforms offer what may seem to be the easiest way to sell tickets, however. There are three categories of sellers that use the online secondary platforms:
 - (A) Regular traders that have bought (or have possession of) tickets in order to resell, having never intended to go to the event.
 - (B) Event attendees who have purchased more tickets than they wish to use in order to sell some to help pay for the tickets they do plan to use.
 - (C) Those that planned to use all the tickets they bought but whose circumstances have changed, meaning they can no longer attend.
14. Sellers that fall into Category (A) and Category (B) will look to profit on their “investment”. They are likely to put their tickets up for sale as soon as possible in order

to exploit the publicity around the original sale. By using botnets, professional Category (A) resellers (or “touts” as some refer to them) may buy up tickets in batches purely for the purpose of resale at a profit. This is evident in sales patterns of tickets for events that seemingly sell out in minutes only to appear on the secondary ticketing market. In doing so, professional resellers may block out consumers keen to secure a ticket, who are instead therefore faced with paying a higher price than would have otherwise been the case. Evidence suggests that the highest resale prices are often obtained at the point of general sale and that resale value declines thereafter for all but the most popular events. Category (C) sellers may not be so focused on profit, just wanting to recoup as much of their money as possible or let other “fans” attend in their place. Such sellers are likely to make tickets available later, quite close to the date of the event itself. I have not been able to obtain reliable evidence of the relative size of each of these groups but perceived problems are most closely associated with Category (A) and, to a lesser extent, Category (B).

15. Tickets bought on secondary ticketing platforms generally come with greater protections for the consumer than those bought through other secondary sources, such as social media. The platforms themselves tend to offer guarantees to replace tickets which do not arrive or to make refunds. Platforms claim this justifies the commission fees they charge. In total, combined platform fees to purchasers and sellers charge typically amount to 25 to 30% - a much higher fee percentage than typically applies in the UK primary ticketing market. Additionally, they facilitate payment through credit and debit cards which offer their own protections.
16. Where resale and payment are done through a secondary platform, that platform may choose to withhold payment from the reseller until the buyer has successfully attended the event. Liability for a void or undelivered ticket thereby rests on the reseller, not the platform, and if a replacement ticket is needed, the cost of this will be charged against the reseller’s account. These terms should act as a deterrent to the fraudulent sale of tickets. However, all of the platforms have deals whereby regular volume-buying resellers are paid for their ticketing transactions before an event, presumably because platforms are competing for these volume sales sellers who are needed to supply sufficient stock of tickets to make the site viable and profitable.

Benefits

17. Consumers and the economy benefit in various ways from the existence of a well-functioning secondary ticket market. First, it creates a safe and straightforward way for consumers who have bought tickets, often much in advance of the event, to get some money back if they cannot use them - Category (C) sellers.
18. Second, it provides an opportunity to attend events for people unable or unwilling to participate in the original primary ticket sale. This may include tourists wanting to attend a local event as well as those more spontaneous in their behaviours. Depending on the popularity of the event they may have to pay a premium over those who bought tickets from the primary source, but this is a value judgment for them to make. For some events, late tickets may actually provide a cheaper means of access.
19. Third, it is a viable profitable service which some people, both as purchasers and sellers, desire. Not everyone wants to join the (virtual) queue to buy tickets when first on sale. Some tickets will be available at below face value as the opportunity to use them nears expiry, giving people who might not otherwise have been able to afford the event, the chance to do so.

Drawbacks

20. The secondary ticketing market has perceived drawbacks, however. First, event organisers lose control over the price. The face value on the ticket only influences the initial cost and once a ticket enters the secondary ticketing market the seller decides what price they will accept, although consumers can resist “extortionate” prices, if they wish. Some sellers will only be interested in recovering the original cost of the ticket, yet others aim to maximise their return on their tickets. None of the “profit” reaches the organising body or artist and the practice undermines attempts to maintain wide public access to live entertainment through ticket pricing. To achieve optimum chances of both selling and selling at a good price, sellers may advertise the same tickets for resale on a number of different sites, meaning there is a possibility that they sell them more than once. This prospect encourages such sellers to provide the bare minimum of information (less than required by the CRA secondary ticketing provisions) so that

they can substitute other tickets, if necessary. In consequence, someone may be left without the tickets they thought they had bought.

21. The resale market also restricts the ability of event organisers to know their customers. They may have a target audience but once a ticket goes for resale the organiser has no idea who they are. This inhibits the ability of the organiser to build customer relationships that may have benefits for both parties and be a key goal for the artist, sport, cultural event or club. If the organiser tries to counteract this, for example, by linking use of the ticket to specific identified individuals, then the venue may find it is rejecting people on the door, which is expensive and difficult to deal with, as well as disappointing and potentially costly for the would-be attendee.

Pricing Tickets

22. Prices, particularly high prices on the secondary ticketing market, are seen as an issue by three quarters of respondents to the Call for Evidence. Pricing expectations in the secondary ticketing market are naturally conditioned by primary market prices. The lower the initial price is set below a potential clearing level, the greater the scope for profit in the secondary ticketing market. Prices in the primary market are set by the event organisers or promoters on behalf of the event or artist. This commonly comprises the face value of the ticket, plus additional charges such as booking fees, part of which may be distributed amongst the organising parties. There are pressures in both directions on prices. On the one hand, the event organiser will want to maximise the income from a fixed number of attendees. On the other, they want to sell all the tickets quickly to minimise costs and maximise return on publicity for the event. This is particularly true for a promoter who needs to sell nearly all the tickets to turn a profit. For tours or theatre runs the pricing may be set with a view to lower ticket prices, resulting in greater demand and increasing the possibility of extra dates being added. Not all tickets will necessarily be priced at the same level. Pricing strategies may vary according to the venue's layout and choices of the organiser. So, whilst arena pop concerts have tended to be pitched at two or three price levels (depending for example on whether there is a standing facility), theatres have wide differentials between seating prices according to proximity to the stage.

23. An alternative pricing model is “dynamic pricing” more akin to that seen in selling airline tickets. Rather than having price categories, with dynamic pricing, changes in demand will drive the price, aiming to maximise the revenue from each seat. To do this, ticket prices are adjusted in real-time by complex algorithms according to the quality and quantity of the seats/tickets and demand for the event. This is a model which is used with airline tickets but is only just beginning to be considered for events in the UK.

Consumer Interests and Legislative Framework

24. The main consumer interest is in being able to access events at a price they consider to be value for money. Different consumers have different perspectives on the value of a particular event, so a single price is difficult to set, but knowledge of what is on offer and when is important. Some customers will happily pay more for a ticket close to the day of an event once they are clear that it will fit into their itinerary. Others will want to grab tickets straight away in order to build their plans around the event. Typically, primary ticketing strategies fit the latter consumers well, but fit less well with the former who may then divert to the secondary ticketing market and end up paying more than their counterparts.

25. A consumer survey conducted on behalf of my review by the Bostock Marketing Group Ltd (“consumer survey”)³ indicates that nearly a quarter of ticket buyers thought the reseller website was an official vendor of the ticket. This demonstrates some lack of consumer knowledge of the role of intermediaries, such as online ticket marketplaces, that do not own the tickets in which they are transacting. The complexity of ticketing arrangements for live entertainment mirrors in some ways that of rail ticketing, with the consumer confused about ticket types, what they are buying, and under what terms and conditions.

26. The legislative framework (including but not limited to the secondary ticketing provisions in the CRA) is designed to ensure that consumers have the information they

³ Published alongside this report, <https://www.gov.uk/government/consultations/review-of-consumer-protection-measures-applying-to-ticket-resale-call-for-evidence>

need when buying a ticket on the secondary ticketing market. This includes the face value and full cost of the ticket, as well as the location within the venue. It should also be clear whether any restrictions or terms apply to the use of the ticket, or whether there is anything that restricts the attendee's view of the event. Industry guidance states that if more than one ticket is being purchased, it should be clear whether seats are together or not.

27. The secondary ticketing provisions in the CRA also try to establish whether the reseller has a relationship with the organisers or secondary ticketing facility. The review has found little sign of this information being provided and there has only been limited success in establishing full seat or standing locations (where applicable). This may be partly because resellers fear that such information may be used by event organisers to cancel re-sold tickets or prevent tickets being obtained in the future.
28. Other legislation, such as the Fraud Act 2006, may assist in seeking to protect consumers from "false" ticket sales or fraud where a seller purports to have tickets for an event, but these are either counterfeit or non-existent. The police may shut down websites or ask payment providers to block the use of their facilities by such fraudulent ticket sellers and may prosecute offenders. Additionally, the unauthorised use of botnets to breach primary ticket agent systems to purchase tickets (including purchases over a prescribed ticket limit) might amount to a breach of the Computer Misuse Act 1990 ("CMA 90"), although this remains untested.
29. I consider fraud within ticket re-sales to be a more serious issue than questions of pricing. People can choose whether or not to pay a given price for a ticket and value the event accordingly, but fraud will simply deny them the opportunity they were anticipating to attend an event. Such instances need to be reported by both the event venues (who often end up dealing with the victim) and the secondary ticketing platforms who have overseen the transaction. In my view, both need to help the consumer affected to report suspected crime to Action Fraud.

List of Conclusions and Recommendations

30. In the course of my review, I have been provided with significant evidence of problems existing in the market for tickets. These relate most especially to fraud, pricing and availability of tickets, particularly in the market for music and, to a lesser extent, sport. It is also clear to me that these problems would exist to some extent even in the absence of a secondary ticketing market. Therefore, my recommendations extend beyond the secondary ticketing market as such. In particular some recommendations relate specifically to the primary market where I believe that their adoption would benefit levels of consumer protection in the secondary ticketing market.

Measures Relating to Secondary Ticketing Market

31. The secondary ticketing legislation introduced in the CRA is still being understood and is in need of some detailed clarification. Enforcement in particular is somewhat patchy. Clarification and enforcement should, in my view, take precedence over the creation of new legislation wherever possible. Therefore, I set out below a number of recommendations to improve the monitoring and operation of the existing legislative framework in the CRA.

32. Specifically, clear onus should be placed on secondary ticketing platforms to ensure their sellers fully comply with the secondary ticketing provisions of the CRA. This is because the information requirements in that legislation apply equally to sellers and to secondary ticketing facilities. A mechanism therefore needs to be devised in order to monitor the major secondary ticketing platforms. Apart from police involvement for tackling criminal activity such as ticket fraud, the current regime for enforcement of consumer protection legislation relies to a great extent on the resources and priorities of local Trading Standards Services. There are many competing issues of potentially higher consumer detriment, for example unsafe goods. Nonetheless, a mechanism needs to be devised to monitor the major secondary ticketing platforms to ensure compliance with the CRA so as to reduce the possibility of unreasonable speculative ticketing for all seated events.

Recommendation 1: I recommend that a lead body, such as National Trading Standards, should carry out a concerted investigation of compliance, followed by action coordinated with the police. This may require dedicated funding for a limited period (see Chapter 2).

Recommendation 2: I recommend that enforcement action (and if necessary court proceedings) be taken in respect of breaches of the CRA provisions in order to test them in relation to practical scenarios. On my understanding of the legislation, the secondary ticketing provisions are intended to apply equally to websites based abroad where selling tickets to UK buyers for events in the UK and in my view they should so apply. Further a penalty of £5,000 for a breach is substantial if it relates to a single ticket listing, insubstantial if it relates to the site's listing of a popular artist's tour without complying with the terms of the CRA. If my understanding is not borne out by the courts' interpretation of the provisions, it may be necessary to amend the CRA (see Chapter 2).

33. Beyond this, secondary ticketing platforms, in my view, should take more responsibility and undertake greater checks in order to identify "traders" (as opposed to other sellers) with respect to whom a consumer has wider rights under consumer law. Presumptively, it seems to me, that all those with whom the secondary ticketing platforms negotiate payment terms which involve payment before an event should be declared as traders. A further possibility here is for platforms to presume that all those who sell more than, say, one month in advance of the event are traders. I accept the secondary sites' view that the transaction is between a buyer and a seller, through the intermediation of the site, but identification of traders as against consumer sellers would afford consumers additional protections. On this, I look to the industry itself in the first instance.

Recommendation 3: If within a reasonable time no progress has been made by secondary sites on compliance and identification of traders, then I recommend that the Government considers alternative approaches which might include the necessity for those selling beyond a certain volume of tickets to be licensed (see Chapter 5).

Measures that relate at least equally to the Primary Market that are worth Significant Further Consideration.

34. Many of the problems relate essentially to the primary market, and its interactions with the secondary ticketing market, particularly as regards music. Whilst the primary market is not the direct focus of the review as set out in the Terms of Reference, it is clear to me that measures taken in the primary market would significantly reduce problems arising in the secondary ticketing market that affect consumers. Moreover, without reform, some sectors of the primary market run the risk of reducing consumer confidence or confusing consumers with the result that consumers make decisions they would otherwise avoid. Therefore, I feel it necessary to set out some recommendations relating to the primary market for tickets.
35. For many events, there are several primary sellers. Event organisers should be more transparent as to whether this is the case, listing official primary sellers and cautioning against unauthorised primary sites that may be bogus. Otherwise consumers are likely to be confused regarding primary ticket sales and may end up paying more than they otherwise would need to.
36. Primary ticketing sellers also need to be more transparent about the extent to which a “general sale” is in fact a sale of the whole venue’s tickets. It is clear that in many cases, only a minority of tickets is actually available for purchase at the time of the general sale, leading many people to waste time in trying to access them, and possibly to panic buy. Presales, corporate tie-ups, priority booking, premium tickets and so on are commonly taken out of sale prior to the time of the general sale. If a large proportion of the desirable seats have already been sold, consumers’ time on the primary website may simply be wasted.
37. Transparency on the part of the primary market should also extend to simplification, clarification and standardisation of pricing and refund information.

Recommendation 4: I recommend that, with Government assistance, the primary ticket industry as a whole forms a project group to examine and to standardise, to a considerable degree, the way in which information on the full range of primary ticket outlets, previous or forthcoming opportunities to buy for the same

event and the manner in which clear pricing information including compulsory charges, is displayed. It should also consider the presentation of information on availability and conditions under which refunds are offered. These discussions should take into consideration existing consumer law protections, including in relation to the provision of information, unfair terms and unfair commercial practices (see Chapter 3).⁴

Recommendation 5: If the industry fails to form such a project group of its own accord and implement recommendations as necessary within a reasonable period, I recommend that Ministers call a roundtable for the various primary industry participants (see Chapter 3).

38. There must be a fundamental recognition by all participants in the primary market that pricing, ticketing and venue control are intimately linked, and actions taken in response. This does not mean that they need to be controlled by the same organisation. Nor does it mean that artists who wish to set particular prices for an event should be constrained from doing so. Many people on all sides of the market benefit from relatively low event prices and full venues. However, it does mean, for example, that if ticket prices are set below what the market will bear, the ticketing strategy and venue control strategy should be designed in the light of this. This is why the Glastonbury model works. Prices clearly below what the market will bear are a magnet for professional resellers, so that in the absence of constraints on ticketing purchases in particular, a great many tickets will move almost immediately onto the secondary ticketing market, where prices may be higher and where the buyer will pay additional fees. An armoury of measures can be used to distribute tickets efficiently without undue participation of the secondary ticketing market, including ballots, a single point of sale combined with measures to prevent sales to the same individual on a future occasion, confirmed identity techniques and similar technical solutions, etc. Such methods, and others, are all the more important if venue controls will be limited due to ingress timing constraints.

39. Event organisers should seriously consider whether a more differentiated price structure within the venue than has been traditional, particularly in music, would allow

⁴ There is further discussion in subsequent chapters

cheaper prices for some seats than a relatively flat price structure achieving the same revenue, hence allowing an audience with a greater range of willingness to pay to attend the event. Here actually, the secondary ticketing market provides an incidental service to the primary market through its role as a price discovery mechanism⁵ relating to tickets in different locations within a venue. I do not wish to be prescriptive about this, but I express the hope that the primary market will develop models which better achieve the twin aims of maximising attendance and allowing individuals with a range of means to attend. Alternatively organisers could operate a ballot for seats for events they believe likely to have excess demand.

40. I also have recommendations for the primary ticketing market in relation to “bots” and tackling them.

Recommendation 6: I recommend that the live event industry should be represented in the Cyber-security Information Sharing Partnership (CiSP), a joint industry and Government initiative to share cyber threat and vulnerability information. This will give the industry the ability to share, learn and seek advice from Government and other business sectors (see Chapter 2).

Recommendation 7: I recommend that primary ticket vendors should take note of my comments in this report and take seriously the possibility of mass purchase by individuals using bots who have no intention of attending the event and guard against this. Mass purchases of this kind are usually undertaken with a view to resale at a profit, resulting in the primary sites selling out very quickly and tickets ending up on the secondary ticketing market at inflated prices. This deprives consumers of the chance to acquire tickets at the price originally established by the event organiser (which may have been set at lower than expected levels to increase the participation of certain groups). Supposed limits on ticket purchases that do not take into account the possibility of purchases from a variety of sellers amongst many selling the event, or purchases by the same person at a different point in time, or from the same person under different

⁵ By this I mean, a mechanism for determining what a market clearing price for a particular location is likely to be

guises, are next to useless. Captcha-type technologies⁶ are not sufficient in most cases. Organisers should seriously consider requirements for individuals to prove they are indeed individuals by means such as confirmed identity technologies. Whilst I accept that primary sellers are in the market to sell tickets, they have longer term interests in ensuring the public feels well served. Primary ticket vendors should also report “bot” attacks to the police so that they can be investigated (see Chapter 2).

Action by others

Consumer Education

41. It is apparent to me that there is significant confusion amongst consumers regarding various aspects of the ticketing process.

Recommendation 8: I have produced some practical tips for consumers on ticket purchasing at Annex I to my report that I recommend are taken into account, and publicised, by Citizens’ Advice and other appropriate consumer organisations (see Chapter 7).

Police Action

42. I have also seen clear evidence that fraud and computer misuse are both present in the events market. However, these are not all directly related to the presence of a secondary ticketing market, since bogus websites, for example, may purport to offer primary tickets. Fraud, specifically, has been the subject of police action, prosecution and harsh penalties imposed on criminals. The Fraud Act 2006 in particular has proven to be a useful vehicle for prosecution of ticketing offences. Therefore, I do not propose different actions in this area, save for continued vigilance in regard to ticketing offences, encouraging reporting to, and greater publicity for, Action Fraud and the taking down of bogus websites, including those based outside the UK.

⁶ Captcha-type technology is a computer program or system intended to distinguish human from machine input, typically as a way of thwarting spam and automated extraction of data from websites, such as on-screen twisted letters to which the reader needs to respond to continue

Industry Bodies

43. The ticketing industry is complex and fragmented and so far has excluded most secondary sites from membership of industry bodies, even though in some cases formal arrangements exist between primary sellers and their approved secondary agents. Whilst there are clear advantages gained from a fragmented industry, as opposed to one dominated by one or two large operators, there are equally advantages gained from the development of recognised industry standards adhered to by operators whether in the primary or the secondary ticketing market. These include the possibility of a common standard for tickets confirming their authenticity and common terms, for example, on refunds in cases of event cancellation.

Recommendation 9: I recommend that the ticketing industry continues to develop comprehensive approaches, such as a common standard for confirming the authenticity of tickets and common terms, and to improve consumer awareness of the standards and their benefits. Again, this would have benefits in reducing consumer confusion (see Chapter 4).⁷

Partnership working

44. I consider that the Competition and Markets Authority (CMA) and the Consumer Protection Partnership (CPP), working with the live event industry and other bodies with a remit for consumer protection, should develop best practice guidance on the practical application of unfair terms legislation to ticketing terms and conditions.

Other things that I have considered, but *do not* recommend:

45. I now turn to actions that have found favour in some circles, but which I am not recommending at this stage. One general reason for not making recommendations for further significant legislation at this stage is that existing legislation, both the CRA and in other legislation, is not yet being fully enforced or clarified. I have received comments about a number of previous proposals, however, and I now comment on

⁷ There is further discussion in other chapters

three specific ones that have been made in the past and give reasons for my rejecting them at this stage.

46. A ban on the secondary ticketing market. My brief reasons are that:

- (i) A ban would not lead to the absence of secondary ticketing, but would simply drive it underground/offshore, with implications for raised levels of fraud;
- (ii) Several primary operators have chosen to link up with secondary agencies suggesting their implicit approval of such activities;
- (iii) A significant proportion (perhaps 30%) of tickets on secondary sites are priced below face value, offering a useful service to consumers and allowing more people to attend the event.

47. As I explain in my report, there are positive features to the secondary ticketing market that provide an opportunity, in a market economy, for certain consumers to consider a ticket purchase from a vendor in the market.

48. A cap on resale prices at a particular level. My brief reasons are that:

- (i) The history of price caps in other spheres is not a propitious one, particularly where the set of sellers is not well defined; people find their way around them;
- (ii) There are associated with this some difficulties in defining what is meant by a (say) 10% mark-up, for example, in terms of upon what base value a percentage limit is imposed;
- (iii) again there is an increased likelihood of sellers moving abroad in order to circumvent the cap;
- (iv) most importantly perhaps, there is a question of who would enforce the cap and what resources they would employ. Merely declaring there to be a cap is not sufficient. Price caps in Britain are most often enforced by dedicated, substantially staffed regulators dealing with a clear set of established companies subject to their regulation. My feeling is that such a body would only be merited in circumstances where very substantial and sustained evidence of (the potential for) market manipulation was present. It would also

exonerate the primary market from complicity in creating the circumstances behind a substantial secondary ticketing market;

- (v) It would be of limited effect since there are rapidly changing routes to market, including social networking sites, some of which are based in other jurisdictions, meaning any legislation would be extremely difficult to police or future-proof.

49. Making the use of bots or botnets illegal. My brief thinking is:

- (i) The existing legislation has broad application and unauthorised access to others' computers systems by bots and botnets may already give rise to breaches of the CMA 90;
- (ii) The primary market could and should do more to protect itself from attack from bots including, in particular, reporting such incidents to the police;
- (iii) As with the ticketing provisions of the CRA, clarification of existing law and enforcement should take precedence over new legislation.
- (iv) Moreover, use of bots and botnets is not necessarily malevolent – my understanding is that using a “bot” on your own system or with authorisation of the system owner would be lawful.

Main Report

Introduction

1. My review has considered consumer protection measures in the online ticket resale market, and particularly consumer protection measures. The growth of the internet has made both selling and buying tickets a relatively quick and easy process, compared with pre-internet times. It has also made online ticket resale possible, whether reselling a few now unwanted tickets, or purposely buying up tickets with a view to resale. Consumers can be both sellers and buyers in this online market and there is a grey area between consumer resale activity and what might be considered as trading in tickets. A consumer noticing that they make a profit reselling a ticket may do it again, even if just to help fund their own ticket by buying and selling a couple on the side. However, there is also a substantial presence of other resellers with no intention of attending the event, but who seek to profit from it. Additionally, as in most online activities, there are fraudsters and, as a result, disappointed would-be attendees.
2. Where once there were only pre-printed paper tickets despatched by post, there are now print-at-home tickets sent by email, tickets on your mobile device, wearable tickets, such as wristbands and credit/debit cards doubling up as tickets. It has never been so easy to buy, sell, or validate tickets as it is now. But the consumer must be vigilant.

Context of the Review

3. My review and the publication of this report are a requirement of Section 94(1) of the CRA that was introduced into the then Consumer Rights Bill to ensure there was consideration of a wider set of issues in relation to online secondary ticketing than had been considered when debating the clauses of the Bill. Section 94 of the CRA requires that a review be carried out of “consumer protection measures applying to the resale of tickets for recreational, sporting or cultural events in the United Kingdom

through secondary ticketing facilities. “Secondary ticketing facility” is defined in section 95 of the CRA as internet-based facility for the resale of tickets for recreational, sporting or cultural events.

4. In 2014, the All-Party Parliamentary Group (“APPG”) on Ticket Abuse published a report entitled “Secondary Ticketing Market; Putting Fans First”, which set out concerns about the secondary ticketing market, including the perceived manipulation of the supply of tickets, inflated prices and ticket fraud. At the same time, there were a number of issues being raised by consumers about problems being experienced, including the difficulties of sourcing available tickets at reasonable prices. These concerns were also raised in Parliament during the passage of the Consumer Rights Bill (later the CRA), leading to the introduction of secondary ticketing provisions in the CRA, including the requirement for this review. The new provisions were primarily aimed at reinforcing the need for transparency of information about tickets on the secondary ticketing platforms. These provisions came into force on 27th May 2015.⁸
5. In October 2015, I was jointly appointed by the Secretaries of State for BIS and DCMS to undertake the review of consumer protection in the online ticket resale market, as set out in the Terms of Reference of my review. This report is the outcome of my review. While I have been supported by civil servants from both these Government Departments, the report and its recommendations are mine.
6. I have sought to conduct an inclusive review process⁹ by engaging with experts with differing perspectives from a number of fields including, but not exclusive to:
 - online ticketing marketplaces/platforms
 - those responsible for monitoring the application of consumer law
 - enforcement
 - event organisers
 - sport, music and entertainment industries

⁸ Information about the history of events ticketing legislation is provided in Annex L.

⁹ Further details on the conduct of the review is provided in Annex A

- those with knowledge of the relationship between primary and secondary ticketing markets.¹⁰

7. I am grateful to all the experts who participated for sharing their views and insights with me in a way that encouraged openness, freedom of discussion, and necessary challenge.¹¹
8. My review has required me to consider both the new secondary ticketing provisions in the CRA and other existing law that is relevant to consumer protection in online secondary ticketing. Nevertheless, my report is not intended to be a definitive statement of applicable law in this area. Rather, it reflects my understanding of the relevant law and forms a background for discussion of the issues that I have identified in the report. As I have noted elsewhere, it is ultimately for the courts to interpret and apply the law and nothing in the report should be viewed as a substitute for independent legal advice as to the view that a court would take of particular legal provisions. Consumers who require advice in relation to specific matters should contact Citizens' Advice in the first instance.

¹⁰ Details of the Call for Evidence is given in Annex B and a list of organisations which were on the circulation list is provided in Annex D and list of organisations that I met during the review is given in Annex F

¹¹ List of organisations that I met during the review is given in Annex F

Chapter 1. The Entertainment Ticketing Market

Summary:

In this Chapter, I describe how ticketing of major events is organised, the value of such events to the UK and the sport-specific legislation applying to sale/resale that pre-dates the CRA. I reference prominent examples such as the Adele concert tour in 2016, the Rugby World Cup in 2015, the London Olympic Games and Paralympic Games in 2012 and Premier League football.

Key points:

- I consider that Premier League football clubs should continue to have an authorised resale facility/partner as the best way of ensuring that tickets are recyclable within the limits of the legislation applicable to football.
- I do not support a “crown jewel” listing of national sporting events that could be subject to resale restriction.

How ticketing is organised

1.1 Event management and the operation of the primary market contribute both directly and indirectly to the existence of the secondary ticketing market. It is therefore important to understand how the interaction of the two markets affects the availability, pricing and trading of tickets. The organisation of ticketing involves several stages, differing somewhat between sport and music, the two foremost categories in terms of evidence submitted to my review. Theatre, a close third in terms of importance, is in ticketing terms aligned to arena-based music concerts, albeit that a theatrical production typically occupies more days at a venue than its music counterpart and can attract a larger cumulative audience. I will now look in more detail at how ticketing works in the areas of sport and music.

Sport

- 1.2 In sport, the venues for major sporting events are normally organised as a grouping. For example, the Six Nations in Rugby Union is administered through Six Nations Rugby Limited, with tickets controlled by the host Union of each match. In cricket, the England and Wales Cricket Board (ECB) is the governing body, and invites the major venues operated by County Cricket Clubs to bid for England matches, with tickets then issued by the venue concerned.
- 1.3 In this way, the organising body has initial control over 100% of the ticketing inventory administered by itself and the partner organisation that operate the sporting venues. The ticketing inventory is then packaged up for sale. For example, in the Six Nations, each Rugby Union distributes tickets among its member clubs and in turn, member clubs distribute tickets to loyal supporters, such as season ticket holders. Others who may receive an allocation of tickets can include debenture holders in a stadium (who can be a significant number), corporate hospitality providers, schools, a broad range of corporate sponsors, and those who work for the Rugby Union, or those who are closely connected to the national team.
- 1.4 Such groups have priority access to the ticketing inventory (presales) and the demand may be such that there is no, or only a limited, general public sale. Such presales come in a number of forms including for regular fans (for example, priority access to tickets for cup competitions for season ticket holders and supporters club members), sponsors (e.g. EE Tickets), venue specific (Club Wembley), or debenture seats (Wimbledon Tennis Championship). The crucial feature is that each “sport” and its chosen venues are together responsible for decision-making on all aspects of ticketing, from deciding whether to have an “in-house” ticketing operation or work with a primary ticketing company, through to whether to have an official secondary ticketing partner or handle returns and resale themselves.
- 1.5 Ticket revenue is a major source of income, but in several sports, television rights constitute the majority of income and these rights are often the subject of fierce bidding. For example, in football, English Premier League clubs’ broadcast revenues account for 54% of total revenue, compared to just 19% for match day revenue, even though most stadia are close to full week in, week out.

- 1.6 The main reasons demonstrating the need for secondary ticketing in spectator sport are to assist individuals who buy tickets and then cannot attend to obtain some recompense, for distributing unused portions of season tickets for particular matches and, in knock-out competitions, to enable particular partisan interests to renegotiate their attendance (e.g. if their team does unexpectedly well or badly). The distribution of unused portions of season tickets is most prevalent in football, with clubs offering resale opportunities once all tickets have been sold via primary ticket routes. This can be an exchange scheme administered through the club or, as is the case at a number of Premier League clubs where demand frequently outstrips supply, a partnership with a secondary ticketing platform. The need to renegotiate attendance was most recently seen in the 2015 Rugby World Cup, where England's lack of progress in the competition led to tickets becoming available and over 100,000 tickets were resold using the official resale platform.

Music

- 1.7 In music, the market is much more complex and fragmented. It appears that in Britain, a venue-driven market operates for large scale artist-focused music events. Major artists are represented by their manager, with a booking agent negotiating a contract with a concert promoter for the artist to perform at various venues. The concert promoter is in charge of putting together the "tour" including the type of venue and how many shows they intend to invest in.
- 1.8 The contractual arrangements between the artist's booking agent, the promoter and the venues will include how ticket zones in the venue will be priced and sold. Typically, there might be three prices for an arena: the "front" (which constitutes the area most in demand); the middle or front half; and the rear of the arena. It may well be the case that tickets for the "front" and "rear" are offered for sale first, so that the promoter can assess demand before confirming the price of tickets for the middle of the arena. This recognises that it is the promoter that takes the financial risk on whether the show will turn a profit. The usual split of any net profit between artist and promoter is between 80/20 and 90/10 depending on venues and length of tour, but with the promoter typically providing the artist with a guaranteed income sum for each

show.

- 1.9 While the artist-manager-agent may determine ticket pricing, the venue often controls how the majority of tickets are distributed. The ticketing inventory is split between venue and promoter, with typically 70/30 or 60/40 splits, and a small allocation for the artist and manager. The venue will sell the tickets through its box office operation, including its website, receiving income from ticket booking fees. The venue will receive a flat rental for hosting the show, or a share of the net profit from ticket sales. The venue will also earn income from hospitality, bars and catering when the show takes place.
- 1.10 The promoter will contractually agree to sell their share of the tickets through certain preferred primary ticketing agencies, receiving a share of the booking fees in return. A number of the major promoters have commercial tie-ups with a particular ticketing company; for example, Live Nation and Ticketmaster; AEG Live and AXS; and SJM Concerts and See Tickets. Each ticketing company has its own system and is protective of its own data. As a result, there is competition between ticketing agents in the UK primary market.
- 1.11 It is also the case that certain groupings have priority access to the ticketing inventory. There are presales where tickets are made available to specified groups before they go on general sale to the public. The most common presale events are: for credit card holders (for example, Barclaycard Entertainment); members of fan clubs (e.g. Adele); venue specific, sometimes linked to venue naming rights (for example, O2 Priority); promoters (for example, Live Nation presale); and album pre-order (e.g. Coldplay's 'A Headful of Dreams'). These pre-sales can take place a week or more before any general public sale.
- 1.12 There are also ticket "holds" where tickets are reserved for those associated with the event, such as the artist, their booking agent, the venue itself, the promoter, the record label etc.

- 1.13 Consequently, a tour across several venues is likely to have different ticket distribution mechanisms in different locations and different proportions of tickets distributed by ticket agents and the venue.
- 1.14 There is also a thriving festival market where combinations of artists perform, with artists being paid a fee by the festival organiser. Here, event management is similar to that of sport in that the venue and promoter are one and the same, holding control over 100% of the inventory, although tickets may be sold through several agencies.
- 1.15 A share of ticket revenue is now the major source of income for most artists, having taken over gradually from sales of recorded music. The estimated Gross Value Added (“GVA”) contribution of the live music sector (comprising festivals, promoters, agents, production services, ticketing agents, and activities at venues) to the economy was estimated at £924m in 2014, a 17% increase on 2013. There is also ancillary spend from the likes of food, beverages, parking and public transport. Secondary rights (e.g. television) are a relatively small element of income for most music artists because, unlike sport, a tour enables consumers across a wide variety of locations to enjoy a show unchanged in most dimensions.
- 1.16 The main factor demonstrating the need for secondary ticketing in the live music industry is that consumers are required or encouraged to make purchases many months, sometimes approaching a year, before the event itself, and several things might arise in the interim that mean people change their plans (friends fall out, other events intervene, etc.). There is frequently a lengthy delay between ticket purchase and despatch, with tickets often not delivered to the consumer until a few weeks before the event. This has been an industry practice for many years with some ticket agents unable to despatch tickets until they receive the printed inventory from the venue, which may be less than a month before the show.

Conclusions

1.17 Thus, in both sport and music there are somewhat complex mechanisms for distributing tickets and the complete absence of a market for recycling tickets would lead to lower consumer welfare. Almost every respondent to my review agreed that some form of secondary ticketing market should exist. However, no one would seriously maintain that the current level of secondary ticketing market activity represents only exchanges between fans for ticket recycling purposes.

1.18 I explain in Chapter 5 what constitutes a “secondary market”, in a ticketing context and the implications of such a market for consumer welfare.

Ticketed Events: a National Perspective

1.19 A live entertainment or sporting event needs the presence of a live audience. This is still the case even where greater revenue is generated through broadcasting rights than through ticketing and merchandise. It is the interaction between the artist or sports star and the observing spectator that provides dynamic energy and makes each live performance essentially unique and worthy of attendance.

1.20 Live entertainment and sport is big business. The GVA contribution of spectator sport is estimated at around £1.1 billion¹² with live music estimated at over £0.9 billion¹³. In London alone, there are around 30,000 theatre performances annually and over 300 live music events. Premier League football is very popular, with approximately 95% of all match tickets sold, yet as the recent £30 away-game ticket price cap decision¹⁴ demonstrates, ticketing of entertainment has never been solely about maximising immediate profit. Those in decision-making positions in sport, music and theatre have an emotional connection and affinity to the history and traditions of their particular entertainment product that can play a part in their thinking on pricing and profit making. The £30 away-game ticket price cap decision demonstrates that the

¹² Economic value of sport in England, July 2013

¹³ Measuring Music, 2015 report

¹⁴ <http://www.premierleague.com/en-gb/news/news/2015-16/mar/090316-premier-league-clubs-announce-new-deal-for-away-fans.html>

football consumer has some ability, via the media, to influence pricing. Indeed, where a positive externality¹⁵ is generated through having a capacity crowd at the match, leading to a better experience for the armchair viewer, arguably the appropriate price is one which fills the stadium with representatives from both sides.

1.21 Sport and entertainment are part of the country's social fabric and identity.

Governments of all complexions have been keen to facilitate a broad range of entertainment provision, as improved well-being and happiness and better life chances flow from participation in our “national culture”. For forms of entertainment that receive some public funding, such as subsidised theatre, ticket prices and booking fees have risen by above-inflation amounts in recent years to make up for reductions in local and central Government support. The alternative would be to reduce, over time, the quality of the performance. There has also been a direction of travel across all forms of entertainment to upgrade facilities and the leisure experience (e.g. catering, better disability access, etc.) to meet rising consumer expectations and remain competitive. This need to invest in the fabric of venues has a relationship with ticket pricing. Sports clubs, in particular, have worked to improve the experience for women and children and concerts have come a long way from, for example, the 1960s era where four men stood in front of a backline of amplifiers and speakers and battled with an indifferent PA system.

1.22 National identity is particularly identified with major sporting events, with the public at large enjoying the shared feel-good factor that comes from international sporting success. The very largest sporting spectacles, such as the Rugby World Cup, are quasi-public events and subject to the same parliamentary and media scrutiny as publicly funded services. It is argued that, on the back of the 2012 Olympics, the UK has established itself as one of the world's foremost destinations for major sporting events. As well as the 2015 Rugby World Cup, the UK has been successful in bidding for the following in the next few years: the World Athletics Championships (2017); the Cricket World Cup (2019); and the semi-finals and final of the European Football Championships (2020). It will be important economically (e.g. inward tourism), and in terms of national identity that these events are successfully hosted, and that the

¹⁵ A benefit that is enjoyed by a third-party

ticketing operation is considered fair and that is it is not undermined by morally questionable activity. While event organisers can control how the ticketing system works, its success depends on how others react to the options open to them. It would be very unfortunate if a public outcry on ticketing practices were to impact negatively on the UK's ability to attract future events, as well as undermining the legitimacy of a secondary ticketing market.

Pre-CRA Regulation of Ticket Resale in Sport

1.23 My comments above do not lead me to a conclusion that ticketing and resale for major sporting events must be subject to legislation, although there has been some legislative activity in relation to sport that has implications for ticketing.¹⁶ In relation to the London Olympic Games and Paralympic Games in 2012, for instance, it was a condition of the International Olympic Committee ("IOC") bidding process that the Government put in place restrictions on secondary sales of tickets for profit¹⁷. The Commonwealth Games Federation has also previously had a bidding stipulation in place as rights holder for the Commonwealth Games, including for the 2014 Games held in Glasgow.

1.24 Section 31 of the London Olympic Games and Paralympic Games Act 2006 made it an offence to sell an Olympic ticket otherwise than in accordance with a written authorisation issued by the London Organising Committee. The offence included advertising that a ticket was available for purchase, with a person being treated as having acted in the course of a business if they did anything as a result of which they made a profit, or had aimed to make a profit. The penalty for this ticket touting offence was £20,000¹⁸.

¹⁶ An overview of relevant consumer legislation is provided in Annex K and Annex O

¹⁷ London Olympic Games and Paralympic Games Act 2006,

<http://www.legislation.gov.uk/ukpga/2006/12/contents>

¹⁸ Section 3, London Olympic Games and Paralympic Games (Amendment) Act 2011

- 1.25 The DCMS post-Games evidence¹⁹ to the Culture, Media and Sport Select Committee (CMS Committee) considered that legislation had provided a powerful signal of intent to deal seriously with the issue of unauthorised sales of Olympic tickets, with the £20,000 penalty regarded as a strong deterrent against the threat of organised criminal ticket touting activity at the Games with its total of nearly 11 million tickets. The DCMS memorandum²⁰ suggested there were around a thousand known “professionals” involved in ticket crime (ranging from ticket touts to fraudsters) but only a handful had come to the Games. Also, no counterfeit tickets were recovered or reported at Games venues. It was clear that a substantial and unprecedented enforcement effort went into preventing ticket resale in relation to the Games that could not be justified for other sporting events in our national calendar.
- 1.26 The CMS Committee recognised in 2007 that while legislation criminalised unauthorised resale of football and Olympic tickets, it did not do so for other major sporting events. In the subsequent DCMS consultation in 2009, it was suggested that criteria might be developed to determine events of outstanding national significance where the secondary ticketing market would be invited to exercise self-regulation and restraint in respect of ticket resale – a concept of “crown jewel” events. However, consultation respondents considered that a system of voluntary restraint would be unworkable and no further action was pursued.
- 1.27 As well as the Olympics, football has its own legislation restricting ticket resale. It is an offence for an unauthorised person to sell or otherwise dispose of a ticket for a designated football match online under section 166 of the Criminal Justice and Public Order Act 1994 (“1994 Act”). Section 166A of the 1994 Act provides that an online information service provider, such as a secondary ticketing platform, commits an offence in relation to the sale of football tickets through the internet if they know (or become aware and do not take immediate steps to stop it) that tickets are being listed for sale by an unauthorised person, contrary to Section 166. It has been argued that only where a secondary ticketing platform has specific knowledge that a specific individual is selling tickets on its service without authorisation from the ticket issuer

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235982/8503.pdf

²⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235982/8503.pdf

(e.g. a Premier League Football Club) will an offence be committed under the 1994 Act. It has also been argued that there is no general duty on secondary ticketing platforms to monitor for such potential illegality, with the onus being on the ticket issuer to notify the platform of each infringement. Nevertheless, since the introduction of the CRA, secondary ticketing platforms are under a duty to report criminal activity of which they are aware (see Chapter 2). Such arguments are related to those regarding the status of a ticket and the consumer's right to resell discussed in that Chapter.

1.28 Section 166 of the 1994 Act states that a person is unauthorised to sell or otherwise dispose of tickets unless they are authorised to do so in writing by the organisers of the match. It is this authorisation that enables StubHub and Viagogo to enter into re-sale partnership arrangements with particular football clubs. However, an individual fan selling a ticket at, or below, face-value online (because they cannot attend a match) is not authorised and may be committing an offence under the 1994 Act as a result. As in other areas of legislation relating to ticketing, there is no certainty whether the courts would find for, or against a fan, in such a scenario, taking into account that the purpose of the legislation is to ensure public order is not jeopardised.

1.29 At present, there are relatively few prosecutions of sellers (or online secondary ticketing platforms) for knowingly advertising football tickets for resale contrary to the 1994 Act. Arguably, this is linked to the decline in incidents of football stadia disorder through effective segregation of rival supporters since the legislation came into force, given that maintaining public order is its overriding purpose. As with other areas of ticketing, differing legislative interpretations, a lack of case law and issues of enforcement mean that platforms operating ostensibly outside England and Wales (e.g. Viagogo and Ticketbis) are more likely to offer for sale tickets for British football matches than those operating from within the jurisdiction. The same applies to resale of tickets for Euro 2016 matches in France with the home nations of the UK.

1.30 Whether the importance of ensuring segregation to reduce the potential for friction (or worse) between rival fans continues to be an ongoing justification for the existing football legislation in England and Wales is a matter outside the Terms of Reference of my review. The UK Government's advice echoes that of the Football Association –

that fans of the home nations in Euro 2016 should purchase tickets through authorised channels that include Union of European Football Associations (“UEFA”) Euro 2016 resale platform. In a similar vein, I would encourage all Premier League football clubs to continue to have an authorised resale facility or partner as the best way of ensuring that tickets are recyclable within the limits of the legislation.

1.31 While accepting, like the DCMS and CMS Select Committees before me, that restrictions on resale for football and the Olympics do in some senses create two tiers of sporting event, I am not convinced that a set in stone regulatory intervention to create a wider “crown jewel” listing of sporting events is justifiable. However, should an international bidding process require the Government to enter into obligations to restrict secondary ticketing, then that is a matter for Government to consider on a case-by-case basis.

1.32 There are also issues around safeguarding public safety and security at public events that have a relationship with controlling admission through ticketing, but such considerations are outside the Terms of Reference of my review.

The Market Place

1.33 To illustrate the complex nature of the ticketing market, I take the example of a concert series current at the time of writing my report, concerning Adele. There was a sale to fans, handled by Songkick, plus sales by venues: handled in Belfast and Glasgow by Ticketmaster, in Manchester by Eventim, in London by AXS and in Birmingham by Ticket Factory. In addition, tickets were available at a substantial premium from the four main secondary ticketing sites. However, availability through this last route was relatively limited. According to Music Ally on 2nd December 2015²¹, “the average number of secondary tickets per Coldplay gig was 2,939, compared to 1,548 for Rihanna and just 54 for Adele”. They put this down to presale precautions and deregistering of touts by Adele’s chosen selling agent: Songkick.

²¹ <http://musically.com/2015/12/02/despite-privacy-scare-adele-smashes-secondary-ticketing-market/>

1.34 More generally, there is the industry practice that the face value of the ticket obtained from a primary seller is generally not the price the consumer pays. Add-ons such as booking fees, fulfilment fees, venue renovation fees, delivery fees and the like are common. This is another aspect of the market that renders it somewhat opaque with no standardised approach to base fees and total pricing or presentation of statistics.²² This is discussed in Chapter 6.

1.35 In my view, the marketplace for music is particularly confusing for consumers to navigate. This is due to its complexity in terms of points of sale (e.g. through presales, venue and agents), timings of sale (e.g. a Friday 9am rush) and pricing of product (e.g. service fees are added). In this respect it is unlike other online transactions that the consumer typically undertakes. I discuss in Chapter 7 particular issues giving rise to consumer uncertainty in relation to ticketing.

²² For example, if a secondary sale is to be priced at no more than 10% above the primary sale, what price is the 10% based on: the face value of ticket or the all-inclusive price, which may differ from seller to seller? What does a refund guarantee in fact guarantee is returned?

Chapter 2. Law, Compliance and Enforcement

Summary:

In this Chapter, I discuss the legal framework that is relevant to consumer protection in the context of online secondary ticketing. In particular, I examine the CRA provisions applicable to secondary ticketing, as well as other potentially relevant law in the areas of consumer protection, fraud and computer misuse. I also assess how well the existing law responds to the problems experienced by secondary ticketing website users, how well it is being enforced and where further action might be required.

Key points:

- I do not at this stage advocate the need for further legislation, but it is clear to me that compliance with current laws and enforcement are issues that need particular focus.
- Much onus is being placed on the secondary ticketing platforms to ensure compliance with the CRA secondary ticketing provisions and at present they are seemingly falling short.
- I consider that greater reporting of suspected fraud by the victims, venues and platforms is needed in order to help Action Fraud and the police build cases against offenders.
- I consider that the CMA and the CPP, working with the live event industry and other bodies with a remit for consumer protection, should develop best practice guidance on the practical application of unfair terms legislation to ticketing terms and conditions.

2.1 As well as the potential statutory protections afforded to consumers under consumer law, and the offences set out in fraud and computer misuse legislation, there are other areas of law that may, in principle, be of use to consumers in relation to

ticketing. These include rights in the areas of contract law, tort and the law of restitution. Most of these causes of action depend on individual consumers bringing claims against traders and are, therefore, less obvious causes of action for an average consumer given the other enforcement routes that will be discussed in this Chapter. Moreover, to pursue those routes a consumer would need to know who the trader is and the details of the vendor are rarely provided on secondary sites.

The Consumer Rights Act 2015 and Secondary Ticketing

2.2 The secondary ticketing provisions are found in Chapter 5 of Part 3 of the CRA, in sections 90 to 94 inclusive. Its key provisions are described in more detail in Annex K to this report, but can be summarised as follows:

- A duty on sellers and secondary ticketing facilities to provide certain information, where applicable, about tickets to buyers, including:
 - the face value of the ticket;
 - information to enable the buyer to identify the particular seat or standing area at the venue;
 - information about any restriction limiting the use of the ticket to persons of a particular description;
 - information about the identity of the seller if they fall into certain specified categories including, for example, if they are an operator of a secondary ticketing facility or an event organiser.
- A prohibition on cancelling tickets offered for resale or blacklisting sellers, unless this was a term of the original contract and the term was not unfair.
- A duty on secondary ticketing facilities to report criminal activity on the facility.
- Powers for enforcement authorities (local authority Trading Standards services in Great Britain and the Department of Enterprise, Trade and

Investment in Northern Ireland) to enforce the provisions, including the power to impose a financial penalty of up to £5,000.

- A duty to review measures relating to secondary ticketing (the basis of my review and report).

- 2.3 It should be noted that although sellers are defined widely in the legislation as a person reselling a ticket for a recreational, sporting or cultural event in the United Kingdom through a secondary ticketing facility; there is no requirement for that person to be acting in the course of a business. Similarly, a buyer is defined simply as the person who buys the ticket. Thus the typical consumer law distinction between traders and consumers does not apply to secondary ticketing.
- 2.4 The secondary ticketing provisions in Chapter 5, Part 3 of the CRA came into force on 27 May 2015. To date, they have not yet been tested in the courts, so the laws and the meaning of the provisions are yet to be interpreted. The practical scenarios in which they might apply have not yet been considered.
- 2.5 Later in this section, I investigate how well the new secondary ticketing provisions are understood, applied and enforced in practice. Before I do so, I will briefly consider other areas of law that are relevant to consumer protection in the online secondary ticketing market.

Pre-Existing Consumer Legislation

2.6 Although the new CRA provisions are the only piece of consumer legislation to target secondary ticketing specifically, there are other pieces of consumer legislation with general application that are, in principle, relevant to secondary ticketing (and ticketing more generally). Relevant legislation includes:

- The Consumer Contracts (Cancellation, Information and Additional Charges) Regulations 2013 (“CCRs”)²³: The CCRs place obligations on “traders” to provide certain core information to consumers they are selling to. This information includes a trader's identity and address. The role of “traders” is discussed in Chapter 5;
- The Consumer Protection from Unfair Trading Regulations 2008 (“CPRs”)²⁴: The CPRs apply to commercial practices by traders before, during and after a contract is made. The CPRs contain a general prohibition of unfair commercial practices and, in particular, contain prohibitions of misleading and aggressive commercial practices, as well as 31 specific commercial practices; and
- The unfair terms provisions in Part 2 of the CRA: these provisions concern contract terms that can be considered “unfair”. Broadly speaking, unfair terms put consumers at a disadvantage by tilting the rights, obligations and responsibilities between the consumer and the trader too much in favour of the trader. These provisions apply to contracts entered into on or after 1 October 2015²⁵.

2.7 Aside from the statutory protections afforded to them under specific consumer legislation, consumers who have entered into contracts with ticket sellers might be able to pursue legal action under contract law for breach of express or implied contract terms.

²³ <http://www.legislation.gov.uk/ukxi/2013/3134/contents/made>

²⁴ <http://www.legislation.gov.uk/ukdsi/2008/9780110811574/contents>

²⁵ The Unfair Terms in Consumer Contracts Regulations 1999 and the Unfair Contract Terms Act 1977 continue to apply to contracts entered into by consumers and traders before 1 October 2015

Fraud

- 2.8 Beyond the CRA secondary ticketing provisions and other consumer legislation, the law relating to fraud is of key relevance to ticketing. This is because the internet can be a conduit for fraudulent activity, with consumers falling prey to scams in which they pay for tickets that never appear, or which turn out to be fake, duplicated or otherwise invalid.
- 2.9 Further, sellers might secure tickets from the primary market by fraudulently misrepresenting their identity (e.g. using false or stolen personal details) in order to avoid restrictions on the number of tickets per person. This way they can purchase large volumes of tickets from primary platforms in order to list on secondary ticketing sites. An offence might also be committed where people pretend to be somebody they are not, either to acquire tickets on the primary market or to resell them on the secondary ticketing market.
- 2.10 The key piece of legislation is the Fraud Act 2006. The Fraud Act 2006 sets out a general offence of fraud that can be committed in one of three ways: (1) by false representation; (2) by failing to disclose information; and (3) by abuse of position. Further, there are offences relating to articles to be used for purposes of committing fraud (relating to possession, making and supply). The term “article” includes any programme or data in electronic form and could in principle, therefore, cover bots or botnets or other artificial intelligence or computer programmes (discussed in more detail below). The Act also contains an offence of participating in a fraudulent business carried on by a sole trader²⁶, to supplement offences of fraudulent trading under the Companies Act 2006.
- 2.11 My time conducting this review has led me to consider that the offence of fraud by false representation is likely to be particularly relevant, especially in relation to the sale of fake or counterfeit tickets, where sellers have dishonestly misrepresented the validity or existence of the tickets for financial gain.

²⁶ Between them the two offences are intended to cover every legal person not covered by section 993 of the Companies Act 2006

- 2.12 Another potentially relevant offence is that of fraud by abuse of position, where persons in positions of trust (who are expected to safeguard the financial interests of another person) dishonestly abuse their position either for their own gain or to cause loss; for example, persons using their position within a primary ticketing agency or event organiser to obtain tickets and sell them on the secondary ticketing market.
- 2.13 In order for the Fraud Act 2006 to apply, any false representation or abuse of position must have been done dishonestly, meaning that the offender's motives and intentions must be taken into account when considering if the offence has been made out. For example, a person might list for resale on a secondary ticketing site a ticket that they do not have (i.e. a speculative listing) but with a genuine belief that they will acquire that ticket in time to provide it to the purchaser. Whether or not that person is acting dishonestly from a legal perspective is not always clear-cut and could give rise to enforcement difficulties.
- 2.14 Whether an offence has been committed rests crucially on establishing if there was dishonesty and an "intent" to make a gain or cause a loss. Any monies received could potentially be shown to be fraudulently obtained if it could be proved that there was no realistic prospect of the ticket being supplied and the seller knew this and dishonestly made a false representation. In the past, websites purporting to offer tickets for major events, such as the Olympics or the Rugby World Cup, that have no association with the official tournament organisers, have been shut down. However, things are more difficult with events where primary ticket agents are numerous, meaning it is harder to demonstrate that there is no possibility of the advertised ticket being supplied. It may not be until after the event and the ticket has not been delivered that a fraud becomes apparent, but even then the seller could claim that they intended to honour the contract to supply the ticket but unexpected circumstances prevented them from doing so.

Computer Misuse Act 1990

2.15 An important issue, highlighted by my review is the prevalence of bots and other technology to acquire large volumes of tickets from the primary ticketing market in a very short timeframe. This can deprive individual consumers of the chance to buy tickets from the primary sites, leading them to look to the secondary ticketing market for available tickets, which may be listed at much higher prices. In order to consider whether these activities are legal or not it is necessary to consider the CMA 90.

2.16 The CMA 90 sets out a number of offences that might be relevant in relation to the use of bots and botnets in a ticketing context. Although the CMA 90 was introduced over 25 years ago, the offences were framed very widely with a view to keeping up with developing technology. However, it does not appear that the legislation has been used in relation to botnets, so it is not possible to say with any certainty that it would definitely apply to any particular practical scenario.

How do “Bots” and “Botnets” work?

2.17 A “bot” (derived from the word robot) is a computer programme that automates the process that a human would go through when buying a ticket, completing it much more quickly than a human. A bot can search for tickets, fill in identity details and payment information and select “purchase”. Bots are not just confined to ticketing but they are, for instance, used in online gambling to make instantaneous and rational decisions. In stock market trading, automated technology processes transactions in microseconds relying on algorithmic trading programmes. Here I use the term “bot” to encompass electronic means of rapid purchase more generally, except where it is important to be specific.

2.18 Those seeking to buy a high volume of tickets for resale can be assisted by the use of bots or botnets which they use to apply for tickets from primary agents. The use of bots and botnets can (in theory at least) allow individuals to acquire large quantities of tickets in a short timeframe, by conducting multiple simultaneous transactions. The

report from the Office of the New York State Attorney General (NYAG)²⁷ suggests that to conceal large numbers of concurrent connections to a ticketing site, the perpetrator will purchase hundreds or even thousands of proxy IP addresses, with the “bot” then automatically rotating through their store of proxy IP addresses to bypass detection and blocking. The bot user can also register a high volume of email addresses to conceal the fact that a single purchaser is responsible for many concurrent transactions.

2.19 The report from the NYAG describes bots as having four functions in relation to ticketing:

- to constantly monitor ticketing sites to detect the release, or “drop”, of tickets
- to automate the search for and reservation of tickets
- to automate the process of purchasing tickets
- to defeat any anti-“Bot” security measures that are employed.

2.20 As a bot can accomplish a task far faster than a human and on behalf of multiple identities, they can have the effect of “crowding out” ordinary human purchasers. Ticketing Bots, tailored to particular ticketing internet sites are available for sale on the internet. For example, a “bot” that claims to access royalalberthall.com is available from TicketBots for around £530. The location in the world of those behind TicketBots is not advertised, but it has been suggested that the IP address is hosted in Panama.

2.21 A “botnet” is a number of connected computers using bots. While there can be justifiable reasons for having a botnet (such as running a computer programme at different sites) and they are not illegal per se, the reality is that the most common uses are perceived as harmful. These include using a “botnet” for a Distributed Denial-of-Service (DDoS) attack on a computer system, causing a loss of service to

²⁷ Obstructed View: What’s Blocking New Yorkers from Getting Tickets, From the State of New York Attorney General, Eric T. Schneiderman, http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf, see Executive Summary at Annex G

users and sending massive amounts of bulk email, known as spamming. Computers can be co-opted into a “botnet” and execute malicious software (malware). This malware then installs modules that allow the computer to be commanded and controlled without the owner’s knowledge and become part of a network of infected computers. Hence the compromised machines are referred to as drones or zombies and the malware running on them as bot. A command and control server is then used to connect infected computers together to form a “botnet”.

2.22 I found that 14% of respondents to the Call for Evidence commented on the need for action against ticketing bots and botnets. There was concern that technology was being used to acquire volumes of tickets in seconds for the purpose of resale, thereby depriving individual consumers of the chance to buy tickets from the primary sites. This is frequently described as persons “harvesting tickets”.

Application of the Computer Misuse Act 1990

2.23 First, it should be noted all the offences in the CMA 90 rely on there being “unauthorised access” to a computer. There is a distinction to be made between bots and botnets that infect computers (e.g. by inserting code) without the owner of the computer knowing about it (unauthorised botnets) and botnets that infect computers with the owner’s consent, for example, with the owner allowing their computer to be part of a botnet. The use of botnets in acquiring tickets from primary sites will only be against the law if access to the primary ticketing site is unauthorised under the CMA 90. The evidence I received from primary ticketing agents suggested that they do not authorise, or condone, access by bots and botnets.

2.24 The precise technology used by botnet owners will have a significant influence on whether they are committing an offence under the CMA 90. When it comes to the formation of botnets, for instance, there is a distinction to be made between bots and botnets that infect computers (e.g. by inserting code) without the owner of the computer knowing about it and botnets that infect computers with the owner’s consent, for example, with the owner allowing their computer to be part of botnet. Equally, when it comes to use of the botnet to access the primary site, it should be

considered whether the botnet operator has used technology to defeat security systems put in place by primary website owners.

2.25 Aside from technological considerations, there is a question as to whether there is unauthorised access where bots are used to breach a website's terms and conditions of access. Some websites' terms and conditions require users to agree that they will not use robots or other devices to monitor content or interfere with the proper working of the site. Others may impose conditions on usage of the site to purchase tickets, for example, imposing limits on the number of tickets that can be bought. It appears that use of bots to contravene a website's terms and conditions could well amount to unauthorised use for the purposes of the CMA 90. However, this argument has not been tested in the courts and would depend on the factual circumstances, as well the relevant website's precise terms and conditions and what they say (if anything) about bots accessing the site and purchasing tickets.

2.26 Use of botnets could potentially constitute an offence of unauthorised access to computer material (Section 1 of the CMA 90). There is also an offence concerning unauthorised acts with intent to impair the operation of computers (Section 3) – this might also apply if they infect a computer in such a way that it impairs its performance, or if others using are prevented from accessing a website as a result. However, the precise parameters of this offence have yet to be considered by a court, meaning that it is unclear what technologies and situations might be covered. Section 3A of the CMA 90 sets out the offence of making or adapting an article for the use in the commission of an offence contrary to the CMA 90 – this might also apply to the acquisition and creation of software to infect machines to create the bot or “botnet”.

2.27 What if the primary ticketing site owner is aware that ticket brokers are using botnets to access the site and acquire large volumes of tickets? The NYAG report confirms that the use of bots is well known to the primary ticket sellers. In one example, over 1,000 tickets were sold to brokers in a one minute period leading the report to conclude that this indicated that automated processes were clearly involved. Is there an argument that by allowing this activity, primary websites are implicitly authorising it with the result that no offence is committed? These arguments have not been tested

in the courts but if they were, it is possible that the courts would consider a range of factors, including whether the primary website had installed security systems or taken any other steps designed to prevent the use of bots, and whether the broker had sought to defeat these systems or whether there are any relevant contractual restrictions.²⁸

2.28 The NYAG report further suggests that some primary ticket sellers in the US also operate as secondary sellers, and indeed the US Federal Trade Commission reached a settlement in 2010 in relation to switching sellers from primary to secondary sites for certain Bruce Springsteen concerts.²⁹ This means that the primary seller benefits from selling tickets to brokers rather than to fans. Brokers will sell them on via the secondary ticketing platform to fans that want to attend. Where the primary and secondary ticketing platforms are part of the same group, it benefits each time a ticket is sold.

2.29 I have noted that there is a potential overlap between use of botnets and fraud, especially where “botnet” owners use others’ personal details or credit cards to acquire large volumes of tickets in breach of a website’s terms and conditions. The above sets out the potential offences that might apply to the range of conduct described. However, the technical methods used by those deploying bots or botnets for such purposes will vary from case to case and the precise parameters of these offences have yet to be considered by the courts.

2.30 Like other parts of the online economy, ticketing agents are seeking to counter bots by using programs that seek to distinguish human from machine input (Captcha) and blocking IP addresses. Views differ on how successful such measures are proving and so it has been difficult for me to obtain evidence regarding the extent to which ticketing bots might be having on ticket purchasing in the UK. In terms of public relations, the degree of success (or otherwise) of bot prevention is not an issue that ticketing agents instinctively want to acknowledge in public, but it does warrant further

²⁸ Here it is my personal view that a requirement to tick a box that says “I am not a robot” is not an effective deterrent to the use of bots

²⁹ <https://www.icpen.org/news/united-states-ticketmaster-and-ticketsnow-settle-ftc-charges-of-deceptive-sales-tactics-refunds-for-springsteen-concertgoers-provided-ftc-warns-other-ticket-resellers.html>

serious investigation and dialogue.

2.31 It is clear to me that primary ticket vendors need to take seriously the possibility of mass purchase by individuals using bots and who have no intention of attending the event. They should guard against this. Here, supposed limits on ticket purchases that do not take into account the possibility of purchases from a variety of sellers amongst many selling the event, or purchases by the same person at a different point in time, or from the same person under different guises, are next to useless. Captcha-type technologies are not sufficient in most cases. Organisers should seriously consider requirements for individuals to prove they are indeed individuals by means such as confirmed identity technologies. Whilst I accept that primary sellers are in the market to sell tickets, they have longer term interests in ensuring the public feels well served. Primary ticket vendors should also report “bot” attacks to the police so that they can be investigated.

Evaluation of consumer protection measures in relation to secondary ticketing

2.32 How well does the existing law protect consumers? In this section, I make observations about the current position and its implications for consumer protection.

The Applicability of Consumer Law to Tickets

2.33 Although, it is clear that there is consumer legislation that is relevant to secondary ticketing, it has yet to be fully tested in the courts in respect of “real life” problems experienced by consumers in relation to the secondary ticketing market. This lack of case law also means that certain legal questions remain unanswered, with possible implications for how the law is applied in practice.

2.34 One unresolved question is “what is a ticket”? The BIS “Consumer Rights Act: Secondary Ticketing Guidance for Business” (dated September 2015) addresses this question from a practical perspective, noting that “most people will understand a ticket as the mechanism by which you demonstrate your entitlement to gain access to

an event and/or claim use of a particular location or area (such as a seat). It might take paper form, be electronic (e.g. on your smartphone), be a physical token or wristband”.³⁰

2.35 From a legal perspective, are tickets goods, services or something else? This is potentially important because it affects the legal rights and responsibilities of ticket holders. For instance, certain parts of consumer law relate specifically to goods, services or digital content and might not, therefore, apply fully to tickets. One view is that tickets are not covered by these categories and are instead licences to access a venue in order to attend an event. This was explored in the case of *Rugby Football Union v Viagogo Limited*³¹, which was heard by a succession of courts, ending up in the Supreme Court in 2012. In that case, tickets issued by the RFU were stated to be the property of the RFU and were subject to the condition that resale above face value would result in revocation of permission to access the event. The nature of a ticket was also considered in the criminal case of *R v Marshall, Coombes and Eren*³². In that case, three individuals were convicted of theft for reselling unused London Underground tickets, as the tickets remained the property of London Underground. Although this case did not relate to events tickets, and is not definitive, it serves as an illustration of how the courts might approach this question and how, as a result, there might be limitations on the applicability of existing consumer laws to ticketing.

2.36 Overall, however, there is very little case law relating to this question or to event tickets specifically. The BIS guidance emphasises that neither it, nor the CRA, attempts to provide a legal definition of a ticket. What is clear, however, is that resale is not prohibited under the CRA. Further, any contractual terms purporting to limit resale are subject to the usual tests for fairness. The CMA’s guidance on unfair contract terms discusses the resale of tickets and states that “a term which undermines a consumer’s right to sell what they own is at risk of being regarded as unfair” (paragraph 5.33.4)³³.

³⁰ https://www.businesscompanion.info/sites/default/files/The%20sale%20and%20resale%20of%20tickets_BIS_GUIDANCE_SEP15.pdf

³¹ [2012] UKSC 55 Supreme Court, <https://www.supremecourt.uk/cases/docs/uksc-2012-0030-judgment.pdf>

³² [1998] 2 Cr App R 282 Court of Appeal

³³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf

2.37 It remains unclear to what extent uncertainty in the legal status of a ticket might impact on the applicability of general consumer legislation, particularly where that legislation refers specifically to goods, services and digital content. It is partly for this reason that the specific secondary ticketing provisions in the CRA were introduced. However, for reasons discussed in Chapter 4, I consider that the CMA and CPP, working with the live event industry and other bodies with a remit for consumer protection, should develop best practice guidance on the practical application of unfair terms legislation to ticketing terms and conditions. I shall go on to consider how well some of the CRA provisions on secondary ticketing are working in practice.

Effectiveness of the CRA Secondary Ticketing Provisions

2.38 To be comprehensive and effective, it should be possible for the new CRA provisions, taken together with any combination of existing consumer protection and other wider legislation, to mitigate any of the likely consumer detriments arising from an online purchase of a re-sold ticket. In principle, there appears to be adequate general and specific consumer protection in place to protect buyers in the online secondary ticketing market. However, as a result of how the law in this area has developed, the available protections for consumers are spread across a number of different pieces of legislation and other law, which is potentially confusing.

2.39 Further, from a consumer's perspective, not all key issues arising from the online secondary ticketing markets are actually covered either by the existing provisions (whether in consumer law or elsewhere). The Call for Evidence heard that consumers were frustrated by:

- consistently facing the sold out sign on the primary sites at the time of the general ticket release (which may be as a result of ticket harvesting by botnets);
- subsequently finding available tickets on the secondary sites at higher prices;
- being unable (under a ticket's terms and conditions) to claim a refund or resell the ticket if they later discover they cannot attend an event.

2.40 To the extent that consumer detriment arises from dishonest actions or ticket harvesting by botnets, the previously discussed legislation relating to fraud and computer misuse may be of assistance. In relation to the operation of consumer protection legislation, however, there are the following thematic issues:

- i. the interaction of the primary and secondary ticketing markets and to what extent any resulting issues are addressed by consumer law;
- ii. the extent to which it is lawful to resell tickets as a trading activity for profit (potentially at very high prices); and
- iii. the extent to which primary sellers are able to restrict lawfully consumers' ability to recoup their money if they can no longer attend an event.

2.41 I shall examine these issues in more detail below, together with an evaluation of the extent to which sellers and secondary ticketing sites are complying with their obligations under the CRA secondary ticketing provisions specifically.

i. Interaction with the Primary Ticketing Market

2.42 It is worth considering that there is no specific legislative regime for the primary ticketing market, although more general consumer legislation may apply. The CRA ticketing provisions are aimed at the online resale market only. However, as discussed in other chapters, it can be observed that some of the issues in the secondary ticketing market originate in the primary market and that the CRA provisions do not address issues arising from this link particularly well.

2.43 It is apparent that bot attacks against primary ticketing sites may result in large quantities of tickets being harvested for sale on secondary sites at higher prices, before consumers have had any real opportunity to acquire those tickets at the price set by the event organiser. Yet, it is worth stating at this point that while it is apparent that bot attacks against the primary sites might be prosecuted as a criminal offence in some circumstances, there is no statutory duty on the primary sites to report criminal activity they become aware of (unlike for secondary sites under section 92 of the CRA). Arguably, this does not assist enforcement authorities when targeting criminal

activity and primary ticketing sites.

2.44 In the absence of a statutory duty on the primary sites, there might be little incentive for primary sites to monitor or report illegal purchasing activity on their facilities, since they are largely concerned with the swift distribution of tickets and success is measured accordingly. Further, some secondary ticketing facilities are owned by companies that also own primary ticketing facilities, and they will consequently benefit from their profitability. Secondary facilities need to be fed with large volumes of tickets in order to flourish and may be more profitable than the primary sites, as they are deriving commission from buyers and sellers who are not required to stick to the price set by the performers and promoters.

2.45 My time conducting this review has convinced me that some primary ticketing agents or promoters are likely to be continuing (as ascertained in the Channel 4 programme “Dispatches” aired in 2012³⁴) on occasion to place tickets on the secondary sites in order to bolster their own profitability. I received evidence about this practice from several sources relating to different parts of the industry and I found this evidence compelling. I discuss this in more detail in Chapter 5.

2.46 This and other non-transparent behaviour can cause confusion for consumers, who might believe that the majority of an event’s ticket allocation will be for sale on the primary ticketing site, in the general sale, when this is not necessarily the case. It appears plausible that many current issues in the market arise from the complex fragmented nature of tickets distribution policies, the lack of transparency about these and the primary ticket release (the “onsale”) being announced to take place so far in advance of the event and in an artificially narrow timeslot. Primary ticket markets are not, of course, the subject of the CRA, but they do impact on its effectiveness and I have therefore considered whether additional measures are needed in the primary market. Otherwise, however promptly they act, many consumers will continue to fail to find both tickets on primary sites and reasonably priced (in relation to their face value) tickets on the secondary sites.

³⁴ <http://www.channel4.com/programmes/dispatches/>

ii. No Prohibition on Resale or Making Profits

2.47 The starting point is that re-sale of tickets is not generally prohibited by law, although contractual restrictions regarding re-sale may be imposed on tickets.

2.48 Further, provided tickets have some commonality with other goods or commodities it is not unlawful to trade and make a profit in tickets, in the process selling them at high prices. Nor is it generally prohibited to buy valid tickets from the primary market in order to resell them at the earliest opportunity, although there may be concerns over fraudulent activity and/or computer misuse in such scenarios (as discussed above).

2.49 The fact that the CRA makes specific provisions for how tickets may be sold on secondary ticketing platforms confirms that the resale of tickets is considered legal. In keeping with most items in a market economy, there is also no reference to the price at which they may be sold or the degree of profit that might be acceptable. The purpose of existing consumer law is to increase transparency for consumers in relation to tickets so that they are able to make informed purchasing decisions and to ensure (in conjunction with other legal protections) that the tickets that they buy and sell are valid.

iii. Contractual Prohibitions on Resale

2.50 One good reason for resale of tickets not being generally prohibited is that consumers might want or need to resell tickets they intended to use if circumstances subsequently prevent them from attending an event. This is not unusual, especially where a ticket has been purchased many months in advance when plans are liable to change. The consumer survey³⁵ shows that consumers do use the secondary ticketing platforms to both buy and sell. Sellers mostly do so either because they can no longer attend or because they need money. The CRA therefore prohibits cancellation of tickets or blacklisting of sellers merely because tickets are re-sold or offered for resale. This prohibition is qualified, however, meaning that event organisers will be within their rights to cancel tickets if this is a clear condition of the

³⁵ <https://www.gov.uk/government/consultations/review-of-consumer-protection-measures-applying-to-ticket-resale-call-for-evidence>

ticket and the terms are deemed fair. In practice, most event organisers do impose such terms and conditions (whether they offer refunds or not) but these have not been tested extensively in court for fairness. This is discussed in Chapter 3.

2.51 A potentially greater risk to the unwitting consumer reselling a ticket, particularly for sporting events is if the organiser goes beyond cancelling the ticket and blacklists the person reselling the ticket so that they are unable to purchase tickets for future events. Once again, an organiser will be within its right to do this if this is a condition of the original contract of sale (providing the relevant term is not unfair). In practice, a buyer may not know that they have been blacklisted, but they may believe it to be a possibility and may be dissuaded from selling a ticket and instead accept the loss of money on something they can no longer make use of.

The use of Bots and Botnets and the Law

2.52 A number of respondents to the Call for Evidence suggested that the CMA 90 needed updating to provide greater certainty on the illegality of bots and botnets in a ticketing context. However, I received no evidence that primary sellers were, as a matter of practice, reporting bot and botnet activity to the police as contrary to the CMA 90. Without evidence on how reported cases are subsequently investigated and whether offences under the CMA 90 can be made out, it is difficult to make the case that the legislation is presently in need of updating.

2.53 I also received comments to the effect that primary ticketing agents were unlikely to be inclined towards reporting potential offences, as bot and botnets were not obviously detrimental to the businesses, except perhaps when having to abide by a contractual obligation to not exceed a stated limit of numbers of tickets per person, or per household address. I saw some first-hand evidence of use of bots and botnets and I would like to see the primary sector be more active in monitoring and reporting (as well as cancelling) transactions that they consider to be evidence of illegal bots and botnet activity. Only by reporting to the police, is there the prospect of some case law in relation to whether, and in what circumstances, bot and botnet activity is caught by the CMA 90. Increased reporting will also enable the police to assess any

wider criminal intent behind bot and botnet usage, such as fraud or money laundering.

2.54 With cyber-security being of ever-increasing importance, the primary ticketing sector needs to share knowledge of emerging threats to ticketing systems from malware and persons using high specification computing and fast connections to manipulate the intended ticket distribution.

Legislative Compliance

Are sellers and secondary ticketing websites providing the information required?

2.55 Evidence provided by the Consumer Protection Partnership (CPP)³⁶ shows complainants to Citizens' Advice seem broadly unaware of the detail of the secondary ticketing provisions or of their other rights. Between April 2014 and July 2015 the Citizens' Advice consumer helpline received 1,669 complaints about various aspects of the ticketing industry and sales.³⁷ The majority tend to relate to the primary market but about a third concern secondary ticket sales. Some of these refer to tickets not being received in a timely fashion or being refused at the venue (e.g. because a duplicate ticket has already been presented) but some complaints have identified non-compliance with the relevant legislation (both the CRA and other consumer legislation).

2.56 Evidence of complaints of missing information suggests that the CRA secondary ticketing provisions are not being well observed by the secondary ticketing facilities and the design of their online facilities. The rules seem not to be sufficiently well or broadly understood by stakeholders in the market, or where they are understood by secondary sites, are only patchily applied. The consumer survey confirms that, as yet, the provisions appear to have had only limited impact upon the problems being experienced.

³⁶ <https://www.gov.uk/government/organisations/department-for-business-innovation-skills>

³⁷ Consumer Protection Partnership: Update Report, Third report on the Partnership's work to date and planned future activities, April 2016, page 33, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518512/bis-16-162-consumer-protection-partnership-update-report.pdf

2.57 Some respondents to the Call for Evidence suggested that despite the legal requirements and protections in the CRA, ordinary consumer sellers are wary of providing the full details of the tickets because they fear having the tickets cancelled. There may be truth in this but it assumes they have read and understood the terms and conditions under which they bought them, which is not the norm for terms and conditions generally. Others suggested to me that consumers would be best served if the law, particularly the CRA was properly complied with. If not, it might be expected that the law would be vigorously enforced by the relevant authorities. Yet Which?, for example, has found in many cases where information required by the CRA was missing. There is therefore scope for greater enforcement of the legislation facilitated by greater central coordination and funding for dedicated enforcement action. I believe that the Government should consider with the CPP what options exist in this direction.

Are Secondary Ticketing Facilities complying with their Duty to Report Criminal Activity?

2.58 I have already discussed above the limitations of the section 92 of the CRA duty in relation to primary ticketing sites. In relation to secondary ticketing facilities, I understand that very few cases of criminal activity have been received by enforcement bodies, whether relating to fraud or otherwise.

2.59 Ticketing resale platforms are seemingly not insisting on compliance with the CRA information requirements by those posting tickets for sale. This can be seen from a routine check of the sites, but also from evidence submitted by stakeholders. I have heard some suggestions that this is a result of full ticket details (e.g. seat location) not having been made available by the primary seller. It seems unlikely that all those listing tickets will not have received the full details of their purchase, which suggests that secondary sites are either not requesting the information strongly enough or not giving sellers sufficient opportunity to supply it in full. This is important because the duty to provide information under section 90 of the CRA falls equally on the seller and the secondary ticketing facility.

International Ticket Sales and Domestic Law

2.60 Another major issue concerns the global nature of ticketing sales and the fact that a number of ticket resellers and secondary ticketing companies are based abroad. This raises questions regarding the extent to which such persons and bodies are subject to the provisions of domestic law, as well as practical questions of enforcement.

2.61 The CRA secondary ticketing provisions do not impose any geographical limitations on the definitions of “seller” or “secondary ticketing facility”, being the parties to which the obligations apply. A seller is a person who “resells a ticket for a recreational, sporting or cultural event in the United Kingdom through a secondary ticketing facility”. A secondary ticketing facility is defined as an “internet-based facility for the re-sale of tickets for recreational, sporting or cultural events”. Neither the definition of seller or secondary ticketing facility makes any reference to their location. The only location that matters is that of the event for which the ticket will provide access – the provisions relate to re-sale of tickets for events in the UK.

2.62 Enforcement of these provisions does not depend on ticket buyers bringing contractual claims to enforce their rights – instead, they are enforceable through a civil penalty regime, as set out in section 93 of the CRA. Enforcers may apply for court orders to assist with recovery of financial penalties that remain unpaid. Equally, persons issued with penalty notices may appeal to a court or tribunal on a number of grounds. However, enforcers face the difficulty that sellers and secondary ticketing facilities based overseas might still seek to argue that they do not have to comply with the new law or pay any penalties that enforcers might try to impose. Lack of enforcement activity reduces opportunities for the precise meaning and application of the new provisions to be tested in the courts (in the event that penalties are contested or unpaid). Even if enforcers were to obtain a court order from one of the relevant UK courts, their ability to enforce this in a foreign country might be limited. Whether such a court order would be recognised overseas would depend on the private international law of the country in question, although there are relevant regimes at European level (including agreements with non-EU member states such as Iceland, Norway and Switzerland) and other reciprocal international arrangements.

2.63 Aside from the CRA secondary ticketing provisions, consumers may wish to bring breach of contract claims in relation to ticketing transactions. In practice, companies registered abroad are likely to stipulate the laws of their own country as the governing law of the contract, which raises questions about the extent to which consumers can rely on protections in domestic law. At EU level, harmonised rules apply to determine the law applicable to contractual obligations³⁸. These rules provide that a consumer and a trader may choose the law of any country to govern their contract, but impose limitations on that choice. Essentially, where a trader directs his activities to the UK, the consumer will continue to benefit from any protections of domestic law that cannot be contracted out of, regardless of what the contract might say. Consumer protections that the parties cannot contract out of include certain provisions of the CRA and the CCRs. In particular, the unfair terms provisions in Part 2 CRA include a provision that, where the consumer contract³⁹ has a close connection with the United Kingdom, Part 2 will continue to apply even if the parties have chosen the law of a non-EEA state.

2.64 Where there is no choice of law in a consumer contract, EU rules provide that the contract shall be governed by the law of the country where the consumer has his habitual residence, as long as the professional is pursuing his commercial activities in that country or directing his activities to that country by any means. Whether an overseas website can be said to be directing its activities to a particular country will always depend on the exact circumstances of each case, but the fact that it offers resale tickets for events taking place in the UK might be an important factor.

2.65 In addition to the question of governing law, many contracts will specify the relevant jurisdiction for any disputes arising under the contract. This will often reflect the choice of law: for example, contracts will often stipulate that they are subject to the law of England and Wales and that any disputes are subject to the exclusive jurisdiction of the courts of England and Wales. Where a consumer contract contains

³⁸ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

³⁹ It should be noted that consumer contracts are defined as contracts between traders and consumers and will not, therefore, be relevant to every ticketing transaction. For more on this see the discussion of “traders” in the Chapter 5

an exclusive jurisdiction clause establishing a jurisdiction that is not that of the consumer, the CRA provides that this is a potentially unfair contract term if it has the object or effect of excluding or hindering the consumer's right to take legal action or exercise any other legal remedy⁴⁰. This is reiterated in the CMA's guidance on unfair terms⁴¹, which considers that consumers should not normally be prevented from starting legal proceedings in their local courts. Further, harmonised EU rules relating to jurisdiction over consumer contracts⁴² aim to provide protection for consumers seeking to enforce rights under a consumer contract⁴³. Broadly speaking, the rules provide that a consumer can choose to sue another party to a contract in either the consumer's own country or the other party's country, regardless of whether that party is based in the EU or not. Nevertheless, practical questions about enforcement remain, particularly where ticket resellers or secondary sites are based outside the EU and seek to argue that the European rules do not apply to them.

2.66 Ultimately, the fact that a ticket reseller or secondary ticketing website might be established abroad will not necessarily deprive a ticket purchaser of his rights under domestic law. I am clear that for the effective functioning of the market it is necessary that consumers should not be deprived of their legal rights. That said, there may be circumstances in which the cross-border nature of the secondary ticketing market provides opportunities for sellers and websites to argue that the requirements of domestic law do not apply to them. I will seek to address some of the practical enforcement difficulties in the "Enforcement" section below.

⁴⁰ Paragraph 20, Part 1, Schedule 2 CRA, <http://www.legislation.gov.uk/ukpga/2015/15/schedule/2/enacted>
⁴¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf

⁴² Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

⁴³ "Consumer contracts" are defined as contract concluded by a person (the consumer) for a purpose outside his trade or profession and a person who pursues commercial or professional activities in the member state of the consumer's domicile or directs such activities to that member state by any means.

Enforcement

Enforcement of Consumer Law

2.67 The enforcement of existing legal protections for the benefit of consumers may occur by various means. Consumers may take direct legal action to enforce their contractual rights against traders and may refer to provisions of the CRA and the CCRs in a dispute. Consumers may also have a right of redress under the CPRs in certain circumstances. In many cases, however, consumers may be unwilling or unable to go to court and rely on enforcement bodies to take action in respect of breaches of the law. Further, breaches of some legislation (e.g. the CPRs) may give rise to criminal offences.

2.68 This section of the report focuses primarily on enforcement activity that is being carried out by various enforcement authorities, often in response to consumer complaints to consumer bodies. Responsibilities for enforcement of various pieces of legislation are distributed across organisations, with some overlap. The key players here are:

- Local authority Trading Standards services
- The Competition and Markets Authority (CMA)
- Citizens' Advice
- The Consumer Protection Partnership (CPP)
- International Consumer Protection and Enforcement Network (ICPEN)

2.69 The primary enforcers are local authority Trading Standards services and the CMA, although other organisations have a key role to play in processing consumer complaints and referring them to the appropriate enforcement authorities.

2.70 Responsibility for enforcement of the CRA is primarily for Trading Standards. This includes powers to enforce the secondary ticketing provisions in Chapter 5, Part 3. However, some issues arising are a matter for the CMA, the police and Crown Prosecution Service instead of, or as well as, for Trading Standards.

2.71 The CMA's primary duty is to promote competition, both within and outside the United Kingdom for the benefit of consumers. Its mission is to make markets work well for consumers, businesses and the economy. The CMA has powers to enforce a range of consumer legislation, in particular for breaches of Part 2 of the CRA requiring terms in business to consumer contracts to be fair and transparent.

2.72 In addition to the provisions contained within the consumer legislation itself the Enterprise Act 2002 provides enforcement bodies with additional tools designed to tackle infringements that cause collective detriment to the interests of consumers.⁴⁴

Enforcement Action by Trading Standards

2.73 As noted above, Trading Standards is the primary enforcer of the CRA secondary ticketing provisions, as well as other relevant consumer laws. Trading Standards delivers its objectives and priorities through a number of mechanisms, including collaboration with other enforcement bodies directly and through the CPP through National Trading Standards and Trading Standards Scotland.

2.74 National Trading Standards has established a National Tasking Group (NTG), which aims to address enforcement gap between local, regional and national consumer protection enforcement. The purpose of the NTG is to determine and support national consumer enforcement investigations. Both CPP and NTS have identified secondary ticketing issues as an area of concern and are looking to target significant areas of consumer detriment.

2.75 National Trading Standards have received requests to coordinate and target enforcement action against the supply of fake or fraudulent tickets through the secondary ticketing market. The requests emanated, for example, from the regional and local authority for one of the country's major event venues. Following this request, the NTS began a project that is now seeking to build further intelligence on

⁴⁴ For details see Annex O

the supply of fake and fraudulent tickets with a view to taking action against some of the major perpetrators.

2.76 By its nature much work on criminal prosecutions is invisible until cases come to court, but I am assured that work is being undertaken in respect to ticketing activity.

2.77 Where prosecutions have taken place (and some successful actions have occurred) they tend to be driven by fraud provisions rather than consumer law. This is partly because such criminal prosecutions are likely to result in more significant sanctions if successful and therefore prove a greater deterrent.⁴⁵

2.78 I understand that NTS are identifying next steps for scrutiny and that these may include:

- specific UK ticket touts to be targeted with enforcement action;
- specific review of the problem of counterfeit tickets;
- consideration of issues around secondary ticketing platforms with a possible view to prioritisation for this year.

2.79 To reinforce this possible activity, I believe NTS should carry out a concerted investigation of compliance.

Enforcement by the CMA

2.80 The CMA has powers to enforce breaches of the CPRs and the unfair terms provisions of the CRA. It also has powers to take action under Part 8 of the Enterprise Act 2002⁴⁶ where there is harm to the collective interests of consumers.

2.81 The CMA has received a relatively small number of complaints since January 2015 – most complaints will be directed by Citizens' Advice to Trading Standards and some

⁴⁵ Further information on enforcement actions is provided in Annex M

⁴⁶ Further information on the Enterprise Act 2002 is provided in Annex O

of those related to the primary market. There was no common theme in the complaints about the secondary ticket sector considered by the CMA's Intelligence Team. Using the CMA's prioritisation principles, in its assessment of these complaints, the CMA did not consider that it should prioritise further work in these sectors at the time.

2.82 At around the time the CRA secondary ticketing provisions were introduced in Parliament, the CMA, using its enforcement powers under the CPRs and Part 8 Enterprise Act 2002, announced that they had obtained voluntary agreements with the four main online ticketing platforms in which they agreed to improve the transparency of the information being made available to prospective purchaser. Specifically, the sites agreed to provide information regarding.

- restrictions on entry and view that may apply to the ticket;
- whether or not multiple seats that are listed together are located together;
- whether there are any additional charges not included in the listed ticket price;
- the face value of the ticket, and a contact email address for buyers to use if something goes wrong.

2.83 The CMA reports that it has been monitoring these undertakings to see what has been occurring, including making occasional spot checks. As of the beginning of 2016, the CMA's view was that the sites appear to be broadly compliant with the relevant commitments that were made to them, but they have not considered the more specific CRA requirements as they are not the relevant enforcement body for these.

2.84 I understand the CMA plans to undertake a thorough review of compliance with the undertakings. Although monitoring is focused on compliance with the CMA's undertakings if, in the course of its review the CMA finds evidence of breaches of the CRA, the CMA will share the information with the CPP, so that the CPP can consider whether and what further action is necessary and, if so, by whom.

2.85 In addition to agreeing undertakings with the four main platforms, the CMA also wrote to other major ticket resale platforms⁴⁷ and brokers⁴⁸ to explain the CMA's expectations about their conduct and their obligations under consumer law and produced a 60-second summary⁴⁹ which offers an at-a-glance guide to buyers on what they can expect from businesses⁵⁰

Enforcement of Fraud Offences by the Police

2.86 The predominant criminal enforcement activity undertaken by police on ticketing is in relation to fraud. The current system for pursuing fraudulent activity requires referral by the National Fraud Intelligence Bureau ("NFIB") to the relevant local police force in the locality of the accused or perpetrator. Reports of fraud are initially received by Action Fraud, which is the UK's national reporting centre for fraud and cybercrime. The centre is run by the City of London Police working alongside the NFIB, who are responsible for assessing the reports received by Action Fraud and ensuring they reach the right enforcer. NFIB has kindly responded to my request for the following outcome figures on ticket fraud approximately for the last two years.

2.87 I also noted that the annual fraud indicator publication for 2013 estimated victim fraud losses from online ticketing fraud at £1.5 billion. However, as the perceived level of confidence in this estimate was towards the lower end of the scale, I treat this estimate with considerable scepticism, having noted the many significant caveats in the report and further noting that it relates to ticket fraud of all types and so includes many other things. I should also add that I did engage with HM Revenue & Customs (HMRC) on what some respondents to the Call for Evidence saw as an inter-relationship between online ticketing and tax evasion. I noted that HMRC had conducted a consultation on the extension of its data gathering powers in relation to

⁴⁷ CMA's open letter to secondary ticketing websites, 16 March 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413278/Open_letter_to_websites.pdf

⁴⁸ CMA's open letter to secondary ticket business sellers, 16 March 2015 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413257/Open_letter_to_business_sellers.pdf

⁴⁹ CMA's 60-second summary on secondary ticket websites: information for consumers https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409554/Secondary_ticketing_v2.pdf

⁵⁰ Further details of the published guidance is provided in Annex N

what it termed the hidden economy that included business intermediaries in sectors such as ticketing. In view of the HMRC interest, I have taken the view that specialist topics such as tax evasion and money laundering lay principally outside the Terms of Reference of my review.

Table 1: Number of Outcomes for Ticketing Fraud Returned by Police Forces

| | Judicial | No further action | Total |
|----------------------------|-----------------|------------------------------|--------------|
| April 2014 - March 2015 | 265 | 343 | 608 |
| April 2015 - February 2016 | 504 | 412 | 916 |

2.88 Figures are not yet available for the latest full year to the end of March 2016. Outcomes fall into broad categories: either a “judicial outcome” or a “no further action (NFA) outcome”. A “judicial outcome” means either a criminal charge – or, at least, a caution - was the result of the investigation.

2.89 There have been some notable prosecutions involving ticketing, and resulting in significant prison sentences. Details up to 2012 are given in the Metropolitan Police’s Ticket Crime Problem Profile Report (“Operation Podium”).⁵¹

2.90 Particular challenges arise in relation to the enforcement of fraud offences. One particular challenge facing prosecutors in the context of ticketing is that fraud offences are often discovered long after the consumer has paid for their ticket, when evidence of dishonesty can be hard to come by. For example, many consumers buy tickets several months in advance of an event, but not might not expect delivery until

⁵¹ Metropolitan Police’s Ticket Crime Problem Profile, February 2013
<http://content.met.police.uk/cs/Satellite?blobcol=urldata&blobheadname1=Content-Type&blobheadname2=Content-Disposition&blobheadvalue1=application%2Fpdf&blobheadvalue2=inline%3B+filename%3D%22892%2F804%2FPodium+Report.pdf%22&blobkey=id&blobtable=MungoBlobs&blobwhere=1283606350147&ssbinary=true>

a few days before the event takes place – by the time they realise that the ticket is not going to arrive, the fraudulent seller is long gone. Or the consumer might receive a ticket in good time, only to discover on the day of the event that it is not valid when they attempt (unsuccessfully) to gain access. Given that many tickets are purchased many months in advance of events, this time lag may present challenges not just for the consumer but also for the enforcement bodies to find substantive evidence to tackle and enforce breaches of the law and to pursue the perpetrators.

- 2.91 As regards the role of fraud in acquiring tickets from the primary market, it might be difficult to establish false representation. For example, a ticket broker purchasing tickets on the primary market using others' credit card details might be able to show that they have the consent of the card holders to make the purchase. Showing that the broker was dishonest may be problematic where there was an agreement or other relationship between the broker and the primary seller from which both benefit.
- 2.92 There is also the question of whether, if tickets have been obtained by fraud, they might be stolen goods (subject to the legal status of a ticket). If secondary ticketing facilities knew tickets to be stolen or acquired fraudulently, they would be under a duty to report it as criminal activity. There might be grounds for suspicion where a large volume of tickets appears on a secondary ticketing website very shortly after the primary sale begins; for example, whether there is a possibility that those tickets might have been acquired fraudulently or otherwise unlawfully. The duty in the CRA notwithstanding, in my view, if there are reasonable grounds for such suspicion, they should report their suspicions.

Computer Misuse Act 1990

- 2.93 It is noteworthy that Action Fraud state that they have received no reports concerning the use of botnets. The evidence indicates that bots and botnets usually target primary ticketing sites for the purpose of buying tickets for onward resale at a profit and it is important to reiterate that primary sites are not covered by the duty in section 92 of the CRA to report criminal activity – this duty applies to secondary ticketing facilities and concerns criminal activity on the secondary facility itself. It is still open to primary ticketing sites to report any concerns they have to the police,

despite not being under a statutory duty to do so.

- 2.94 Generally, I consider it would be useful to obtain clarification of the extent to which use of bots and botnets might be illegal under existing law. If bots and botnets or mass multiple human credit card attacks were not sweeping up the tickets from the primary websites, this would broaden opportunities for primary ticket purchase by the public and this might also diffuse the artificial pressure experienced by consumers to make quick early purchases as more tickets would be available for a longer time.

EU and International Cooperation

- 2.95 As I have observed, there is a strong international element to secondary ticketing and this means the enforcement bodies also need to cooperate. Some mechanisms for this exist. Enforcement represents a particular challenge where secondary ticketing websites are based overseas. The resourcing constraints and pressures experienced by Trading Standards and other enforcement bodies (as mentioned above) mean that targeting overseas sites may not be an enforcement priority, especially where there is doubt over whether or not English law applies and the cooperation of overseas enforcement bodies is not guaranteed.
- 2.96 The European Consumer Co-operation Regulation (CPC Regulation) concerns co-operation between national authorities responsible for the enforcement of consumer protection laws. It was introduced to facilitate improved cross-border enforcement of EU consumer protection laws. The CPC Regulation is aimed at removing barriers to information exchange and co-operation within the EU and empowers enforcement authorities to seek and obtain action from their counterparts in other member states. In accordance with the CPC Regulation, Member States must enforce EU law in their own territory on behalf of all EU consumers and must designate a public enforcement authority to be part of the EU-wide mutual assistance network that came into operation on 29 December 2006, known as the Consumer Protection Cooperation Network (CPC Network).
- 2.97 The CMA is the UK body that has been designated to be part of the CPC Network. It also represents the UK as part of the International Consumer Protection and

Enforcement Network (“ICPEN”), a network of governmental consumer protection authorities from 55 countries around the world. ICPEN aims to share information about cross-border commercial activities affecting consumers and to encourage international enforcement cooperation among consumer protection agencies.

- 2.98 ICPEN's website reports several actions taken by the competent national enforcement authorities in relation to ticket scams and lack of compliance with legislation, including actions taken by the New Zealand, Dutch and Norwegian authorities.⁵²

Thoughts on Current Enforcement Activity

- 2.99 I believe that the routes and methods by which ticketing complaints are handled may involve a chain of notifications and cross referrals to other bodies which makes any enforcement action less than straightforward in any case. There is also a degree of discretion exercised by the first organisation receiving the complaint as to whether or not a complaint is judged to justify or be appropriate for referral for further action.
- 2.100 Although complaints are being logged, analysed and passed on, for example from Citizens' Advice to Trading Standards, chances of low-profile complaints about breaches of CRA secondary ticketing provisions that do not involve fraud being acted upon by Trading Standards are currently limited due to prioritisation of resources.
- 2.101 A good deal of the more prominent activity centres on fraud offences. These will be prosecuted under the Fraud Act 2006 and will not necessarily involve action under any existing consumer legislation. It is worth noting that fraud offences carry significantly higher criminal penalties upon conviction.

⁵² Some examples are:

<https://www.icpen.org/for-consumers/what-icpen-does-for-you/fraud-prevention-month/avoid-ticket-scams.html>

<https://www.icpen.org/news/the-netherlands-consumer-authority-takes-further-action-to-force-websites-that-resell-tickets-to-adapt-their-practices.html>

- 2.102 Broadly speaking, I believe the necessary powers for enforcers exist and theoretically all the elements are in place to enable effective enforcement action for both civil breaches and criminal offences. In practice, however, enforcement of ticketing and other consumer protection legislation appears to be suffering as part of general pressures on enforcement bodies, incomplete understanding of the law and low motivation to tackle online as opposed to “bricks and mortar” related issues and to bring test cases so as to clarify the scope of the law in practice. For Trading Standards, it has hitherto been seen as low priority against other local authority issues, such as doorstep selling and food hygiene.
- 2.103 It therefore appears that, currently, action by enforcement bodies in relation to any breaches of the CRA secondary ticketing legislation is unlikely to be prioritised. In the absence of enforcement, it is difficult to ensure that the benefits of legislation are delivered to consumers. Lack of enforcement action also means that the legislation is not tested in court and so there is a lack of opportunity for the courts to consider and interpret its meaning in relation to specific practical scenarios.
- 2.104 Consumers may seek to enforce their contractual rights themselves but, as discussed earlier, they may have neither the means nor inclination to do so. As the enforcement bodies report, many consumers themselves do not go further than making a complaint to the secondary ticketing website and, if necessary, to Citizens’ Advice. Similarly, those who have been defrauded in some way are not necessarily inclined to spend the time on reporting the matter to Action Fraud, but instead to concentrate on ways to get recompensed.
- 2.105 The secondary ticketing sites may take action to ensure that the complainant receives a refund under their guarantee. Those who have used credit cards to make payment may be able to obtain reimbursement under the protections contained in the Consumer Credit Act 1974.
- 2.106 Trading Standards and the police may also need to be given the training, support and resource to enable them to pursue their enforcement action both at home and abroad.

2.107 I believe there would be benefit in reinforcing the major efforts being made by Action Fraud to counter fraud in relation to ticketing. Venues that have identified customers that have been victims of fraudulent tickets should help ensure these incidents are reported to the relevant authorities. This should meet Action Fraud's request for more cases to be reported to them direct by the public (or referred by partners) to enable a body of evidence with critical mass to bolster enforcement activity.

Conclusions

2.108 The new secondary ticketing legislation introduced in the CRA in relation to secondary tickets is still being understood and is in need of some detailed clarification. Enforcement in particular is somewhat patchy and may benefit from greater cooperation, resource and training. Clarification and enforcement should, in my view, take precedence over the creation of new legislation.

2.109 Clear onus should be placed on secondary ticketing platforms to ensure their sellers fully comply with the secondary ticketing provisions of the CRA. This is because the information requirements in that legislation apply equally to sellers and to secondary ticketing facilities. A mechanism therefore needs to be devised in order to monitor the major secondary ticketing platforms. The current regime relies to a great extent on the actions of local Trading Standards officers who have many important priorities and whose complainants via the Citizens' Advice consumer helpline may be from another part of the country. Furthermore, fully pursued, compliance with the CRA would reduce the possibility of speculative ticketing for all seated events.

2.110 Both the application of the CRA in relation to offshore secondary sites and the nature of the penalties for breaching the CRA provisions require testing, if necessary by enforcement action against offenders and court or tribunal proceedings if financial penalties imposed by enforcers are not paid. On my understanding of the legislation, the secondary ticketing provisions are intended to apply to websites based abroad and in my view they should apply. Also, a penalty of £5,000 for a breach is substantial if it relates to a single ticket listing, insubstantial if it relates to the site's listing of a popular artist's tour without complying with the terms of the Act.

These are aspects of the CRA that I think need to be tested in practice. If my understanding is not borne out by courts' interpretation of the provisions, it may be necessary to amend the CRA.

2.111 I *do not* feel a need to recommend a change to legislation relating to fraud or computer misuse but, in order for authorities to take action, offences and breaches need to be reported. I believe that there is an obligation on all parties involved in ticketing, event organisers, venues, primary agents, secondary ticketing facilities and agents and consumers to report breaches they encounter to the relevant authorities. More may need to be done to encourage and facilitate this, particularly for consumers who have suffered issues using tickets they have purchased.

2.112 I have also seen clear evidence that fraud and computer misuse are both present in the events markets. However, these are not directly related to the presence of a secondary ticketing market, since bogus websites, for example, may purport to offer primary tickets. Fraud, specifically, has been the subject of police action, prosecution and harsh penalties imposed on criminals. The Fraud Act 2006 in particular has proven to be a useful vehicle for prosecution of ticketing offences. Therefore, I *do not* propose new actions in this area, save for continued vigilance in regard to ticketing offences, greater publicity for Action Fraud and the taking down of bogus websites, including those based outside the UK.

Recommendations:

- **Recommendation 1: I recommend that a lead body, such as National Trading Standards should carry out a concerted investigation of compliance, followed by action coordinated with the police, where necessary. This may require dedicated funding for a limited period.**
- **Recommendation 2: I recommend that enforcement action (and if necessary court proceedings) be taken in respect of breaches of the CRA provisions in order to test them in relation to practical scenarios. On my understanding of the legislation, the secondary ticketing provisions are intended to apply**

equally to websites based abroad where selling tickets to UK buyers for events in the UK and in my view they should so apply. Further a penalty of £5,000 for a breach is substantial if it relates to a single ticket listing, insubstantial if it relates to the site's listing of a popular artist's tour without complying with the terms of the Act. If my understanding is not borne out by the courts' interpretation of the provisions, it may be necessary to amend the CRA.

- **Recommendation 6:** I recommend that the live event industry should be represented in the Cyber-security Information Sharing Partnership (CISP) a joint industry and Government initiative to share cyber threat and vulnerability information. This will give the industry the ability to share, learn and seek advice from Government and other business sectors.
- **Recommendation 7:** I recommend that primary ticket vendors should take note of my comments in this report and take seriously the possibility of mass purchase by individuals using bots who have no intention of attending the event and guard against this. Mass purchases of this kind are usually undertaken with a view to resale at a profit, resulting in the primary sites selling out very quickly and tickets ending up on the secondary ticketing market at inflated prices. This deprives consumers of the chance to acquire tickets at the price originally established by the event organiser (which may have been set at lower than expected levels to increase the participation of certain groups). Supposed limits on ticket purchases that do not take into account the possibility of purchases from a variety of sellers amongst many selling the event, or purchases by the same person at a different point in time, or from the same person under different guises, are next to useless. Captcha-type technologies are not sufficient in most cases. Organisers should seriously consider requirements for individuals to prove they are indeed individuals by means such as confirmed identity technologies. Whilst I accept that primary sellers are in the market to sell tickets, they have longer term interests in ensuring the public feels well served. Primary ticket vendors should also report "bot" attacks to the police so that they can be investigated.

Chapter 3. Primary Ticketing Market

Summary:

The Terms of Reference of my review make clear the importance of the interaction between the secondary and primary ticketing market. My work has confirmed this interaction and its impact on the secondary ticketing market. In this Chapter, I explain the dynamics of the primary ticketing market, the timing and methods used in its ticket distribution systems; the relationship with the secondary, the rush generated by releasing tickets within a limited timeframe (leading to some panic buying); and the problems experienced by consumers. I pay particular attention to the greater problems in musical and sporting events and the differing objectives of the various participants in this market. I include different approaches such as staggered tickets release, ballots and greater differential in pricing for the music industry.

Key Points:

- I consider that the primary events market might take some lessons from the Glastonbury Festival and other sporting models of refunds and internal resale, although these are less easily applied outside those specific contexts.
- I consider that the timing of main release of the tickets (the “onsale”) has a major impact on demand and the prices which might be levied on the secondary ticketing market. Announcing a one-off tickets release often at a date and time far in advance of the event is key to fuelling the demand for the secondary ticketing market which allows higher prices and fees to be obtained.
- I consider that major artists and their management need actively to ensure that their contracts allow for the artist, via the internet, to directly give the public the fullest possible details of the multi-channel distribution network that applies to ticketing for an event at which they are to appear. Artists need to

enforce the terms of contracts with primary agents including rejecting mass purchases over the internet.

Market Participants' Objectives and Operations in Music Events

- 3.1 One element all supply side parties have in common is that they all want to create an impression of an event worth attending, which will be well attended and will be exciting, creating a “buzz” and an expectation that the event will be a sell-out. That aside however, the different parties in the market have different objectives which lead to conflicts. I will describe these different objectives and the consequences first through focusing on the music industry, but there are many parallels to sport.⁵³
- 3.2 Musicians earn revenue from concerts in two different ways, directly from the ticket sales and indirectly from merchandise purchased at the venue (t-shirts etc.). The oral evidence I received supports the view of some that the higher the ticket price, the lower the sales of merchandise and the less likely consumers are to attend repeated concerts of the same artist. It is also held by many of those who complain about high prices that the more enthusiastic consumers are those with less disposable income and further that they contribute more than the more affluent to the audience vibe, essential to an artist performing at their best. These factors, combined with a desire to play to packed venues, lead to tickets being priced to achieve this aim⁵⁴ and the adoption of strategies that support them.

Presales

- 3.3 One common feature, particular in music is for a “general onsale” to be preceded by a series of presales offered not just to fan club members, but venue subscribers, certain credit card holders, sponsors' customers etc. Evidence from the US has

⁵³ See Annex H for some simple economics of ticket sales

⁵⁴ This last reason is similar to the reason why shares in privatised companies were sold below market value, because this was seen as demonstrating the “success” of privatisation.

suggested that for some events as much as 85-90% of a venue's inventory has already been sold or placed by the time of the internet sale opening to the general public. If there were more transparency about this, fans would be able to make better judgments as to the likelihood of them being able to get a ticket through the general onsale. For some, this would save them a considerable amount of time that would otherwise be wasted in fruitless pursuit of a primary market ticket that simply is not going to be available.

Objectives of Artists and Artists' Management

- 3.4 The views of others, such as the artist's management and the record company, will also be a factor in any pricing. With the comparative decline in recorded music income, a commonly view held is that artists are looking to live performance to provide compensatory income for the artist, creating an upward trajectory in pricing, as performance (rather than recording) becomes an ever more important income earner for those at the very top. In recent years, demand has been particularly buoyant in the festival sub-sector, where music forms part of a wider consumer offer embracing food and other "pop up" attractions.
- 3.5 A further reason is a common view amongst the general public that artists dictate the sale price of tickets, and therefore high prices from whatever outlet imply the artist is "ripping people off", a view which is mistaken - artists may control or have a say in face value pricing, but ticket distribution and fees levied may largely be out of their hands. Yet artists may be reluctant, for a range of reasons, to set prices at a market clearing level⁵⁵. Similar to a sporting body, an artist may want to set prices with a social or fairness objective in mind, so that the possibility of concert attendance remains open to fans with lower disposable income, who may be perceived as having been loyal to the artist "on the way up" when prices were lower and developing a "following" was key to the artist moving up from playing smaller arenas.

⁵⁵ A market clearing level is where supply is equated to [demand](#), so that there is no leftover supply or demand

- 3.6 An artist will also be conscious of accusations of “cashing in” or “selling out” that will also help to suppress prices, even though growth in their fan-base means that demand now outstrips supply. Conversely, there might be difficulties, in terms of the media coverage, in having highly-priced tickets.

Lack of Price Differentiation

- 3.7 The other common feature of pricing is the *relative* lack of price differentiation within a music arena, compared for example with operas and theatrical performances where price differentials may lead to some tickets more than ten times as expensive as others. Again, this may be seen as demonstrating fairness to consumers, but it does lead to certain tickets, for example, particular locations within the venue, being much more in demand than others. However, views on price differentiation may gradually be changing, given the experience of consumers across other products, such as travel and hotels. Nevertheless, competition from festivals where, outside of VIP style packages, price discrimination is largely absent may be a factor dissuading the introduction of greater price differentiation in indoor arenas.

Concert Promoter's Role

- 3.8 A concert promoter is a key player in the live music market. In essence, this is the person organising all the technicalities of the show. They are essentially risk-takers and commonly bear a good deal of this risk personally, both financial and reputational. Staging a concert is an expensive business, with often tight margins, and judging the level of demand is difficult, because consumer tastes change rapidly. Tickets need to be priced to cover the costs of hiring the act and the venue, and evidence from representative bodies suggest that the promoter tends to make their profit on the last 10-15% of sales. Hence selling out a venue is in their interest, and they do not want to price tickets at a level that dissuades too many “floating” spectators from buying them. Unsold tickets are to be avoided, and a promoter may be inclined to cut prices of the least desirable seats to spur sales to bargain hunters. For a promoter, profit maximisation will be tempered by some risk aversion in their

pricing strategies.

- 3.9 Promoters are thus much more inclined than artists to maximise revenue from the set of concerts as a whole. Possibly because they are the ultimate risk-takers, promoters have acquired perhaps an undue reputation for being somewhat shady and untrustworthy. I noted that no respondents to the 2015 PRS for Music⁵⁶ consultation stated that they allocated tickets directly to the secondary ticketing market. Yet oral evidence I received from several quarters in the course of my review was that some promoters (or their associates) are known (quietly) to sell some of the ticketing inventory onto the secondary ticketing market at higher prices, because they recognise the gains to be made. On the other hand, in the event of poor demand, they may want to offload some tickets at below face value onto the secondary ticketing market in order to generate revenue. The likely involvement in supplying the secondary ticketing market was also acknowledged at the time of the Dispatches programme in 2012 to the effect that (against the rise in “touting”) promoters, artists and managers might, at least in part, operate in the secondary ticketing market in order to catch the lost revenue on behalf of artists and event owners so that money would at least stay in the music industry. Media reports on the prevalence of this practice continue to appear (e.g. on the *Guardian* website in April 2016).⁵⁷
- 3.10 Primary ticketing agencies specialise in selling tickets allocated to them by a concert promoter. More than one primary agency may be contracted for a specific event, unless exclusive rights to a venue apply, but in any case, across a tour there are likely to be several primary agencies involved. Clearly, these are commercial companies which make money through promising efficient ticket distribution. Both electronic and paper means are used to distribute tickets, sometimes both for a single event.

⁵⁶ Performing Rights Society

⁵⁷ <https://www.theguardian.com/technology/2012/mar/16/ebay-launches-ticketing-site-stubhub>

Venues' Position

- 3.11 Venues are driven in large part by profit motives, which essentially translate into maximising revenue given that most of the costs are fixed. A venue may not be overly concerned by the face value of a ticket if they are being paid a fixed price rental for hire of the venue, as well as fees for bookings through them. However, contractual arrangements between them and agents are heterogeneous, with variables such as day of the week of the performance, or the reach of the venue's mailing list, influencing the contractual formula.
- 3.12 In the negotiation between promoter and venue as to whether to make provision for reserve concert dates in the artist's itinerary, they face a trade-off between possibly higher prices and full houses for a relatively smaller number of concerts versus a larger number of shows with attendant extra revenue but the possibility of disappointing audience numbers for the extra dates. Venues may also resort to the secondary ticketing market for some of their allocation, especially to off-load excess inventory for poorly selling shows. This is because the chief income earners for a venue (food, beverages, and parking) only materialise if consumers attend the event. Venues have a long-term interest in the entertainment industry, but not in particular artists.

The "Glastonbury Model"

- 3.13 Glastonbury aims, and normally succeeds, to sell out some months in advance of the festival itself. It aims to price tickets at below the market value. This is a laudable aim, taken for a mix of religious and socialist principles that the organisers are perfectly entitled to hold. But they understand, and respond to, two important factors that constrain their operation. The first arises because tickets are priced below the market clearing level. The second is that the tickets go on sale (or rather, options are taken on them) many months in advance of the festival, indeed in advance of consumers knowing the line-up of performers. Some people who obtained tickets will discover they cannot, or perhaps do not want, to attend, for a wide variety of reasons. This is not a minute proportion of consumers; it might amount to 5 - 10% of

purchasers.

- 3.14 Therefore, there is an organised secondary ticketing market operated by the festival organisers themselves. This is reviewed on two occasions in the run-up to the festival itself and I believe each of their resales take place on a single day. The incentives for people with tickets who wanted to attend but now cannot are to place their tickets in this market, because they can be assured of a sale. This brings me back to the first key element. Tickets are deliberately personalised and comprehensive checks are made at the entry points to the venue. The system has been well-honed over many years and the event has developed the reputation of a strict entry policy.⁵⁸ Therefore, most of the other secondary ticketing sites will not touch Glastonbury tickets.
- 3.15 Glastonbury is in an ideal position to take this stance. The venue is 100% controlled by the organisers, who use a single ticketing agent. Artists are sufficiently numerous that none can impose terms on them regarding ticketing. And ultimately the venue takes any risk involved.
- 3.16 Glastonbury is not unique in this approach to ticketing. Other artists, for example Kate Bush and David Gilmour, have successfully held concerts on a similar basis of below-market prices, reducing the likelihood that tickets will be offered for resale, through checks of identity.⁵⁹ These artists have recognised that their stance may not reflect the morals of purchasers. This contrasts with the position of some other players who take the view that they can dictate a price which is below market value (i.e. take the moral high ground), and then take no steps to police it. This is disingenuous, because purchasers may have an entirely different standard.

⁵⁸ Here is an important lesson. The organisers hold to a strong moral position, but they do not rely on others to maintain the same high standards, rather they impose conditions that maintain them

⁵⁹ Paradoxically, where very few tickets find their way outside the official channel, secondary prices will tend to be higher as a result of scarcity

Lack of Transparency

- 3.17 There is an absence of transparency on ticketing distribution practices, and evidence I have seen from a number of sources that ticket distribution to the consumer (by promoters, venues and the artist's team) is not always 100% what it is claimed to be. I consider that major artists and their management need to be pro-active in ensuring that contracts they sign allow for the artist to inform the public directly of the fullest possible details of the multi-channel ticket distribution network that applies to ticketing for an event at which they are to appear. This openness will help foster a greater degree of public trust and understanding in how tickets are distributed by authorised agents and venues.

Ticketing Strategies for Sporting Events

Football

3.18 In sport, it is argued that European professional teams are more clearly *not* run on a profit maximising basis than their counterparts in the USA. In football, clear examples are Barcelona and Bayern Munich that are organised as not-for-profit sporting organisations controlled by members, albeit they are generating substantial incomes to invest back into maintaining a team in a highly competitive industry. And while professional football in England is dominated by limited companies, and some publicly quoted companies, this has yet to equate to a primary interest in achieving a financial return on investment. For over 100 years, ownership of a football club has never been a purely financial proposition, with in many cases wealthy patrons being prepared to guarantee debts.

Rugby and Cricket

3.19 A dominant profit maximising motive is less apparent still in other sports. The Rugby Football Union (RFU) is in layman's terms an industrial and provident society owned by 1,900 autonomous rugby clubs and aims to make a profit to reinvest in English rugby. It owns the Twickenham stadium. The England and Wales Cricket Board (ECB) has similar status, the members being the chairmen of the 18 First Class Counties and the Chairmen of County Boards in non-First Class Counties. All surplus revenues are reinvested back into cricket - to create successful England teams, to improve infrastructure and facilities and to enable more people to be play and volunteer at the grassroots.

Tennis

3.20 The Wimbledon Championships is more complicated. The All England Lawn Tennis & Croquet Club Limited (AELTC) is a private members' club with 500 members, with a wholly owned subsidiary, The AELTC that operates the Wimbledon Tennis Championships in association with the Lawn Tennis Association (LTA). A related party is the All England Lawn Tennis Ground plc that owns the grounds and grass courts. It is the plc company that issues debentures with the aim of ensuring that the grounds continue to provide the Championships with the best possible facilities. The financial surplus generated by the Championships, after the expenses of maintaining the grounds, is used by the LTA, as the sport governing body, for the general benefit of British tennis.

Sport Governing Bodies' Policies

3.21 The RFU, ECB and LTA are examples of governing bodies with responsibility for managing their specific sport and as such they do not set ticket prices purely to maximise profit. Ticket prices are set to fill stadia, but also with some social objectives in mind, such as broadening access, so that families, young people, newcomers, and those who cannot afford to pay market rates for tickets can attend. Ticket prices can also look to reward those who follow, volunteer, or play the sport in question with a view to sustaining longer term demand for the event, rather than immediate profit maximisation. For example, for major rugby matches involving England, over 50% of tickets are offered for sale to member clubs, constituent bodies and referees societies. While at the Rugby World Cup, approximately 14% of tickets were sold directly to members of rugby clubs in recognition of their support and contribution to the game.

3.22 To achieve social objectives, sporting events incorporate pricing tiers, with some prices, for less desirable seats, set at well below the level that many people are willing to pay to see the event. Such a strongly tiered pricing structure is a concept which is backed by the sound economic arguments of what is called Ramsey

pricing⁶⁰. Here the idea is that through setting a range of prices, some tickets can be priced well below the single price market clearing level, because these offer a poorer view of the game than the premium tickets, which at the Rugby World Cup, for example, were certainly priced up to very substantial levels. It had ticket prices that ranged from £7 for a child at a match with lower demand through to the highest premium adult ticket for the final of over £500. It had 100% venue control, which assisted in maintaining the differentials. This is not a new idea: Barcelona FC, for example, operates a strongly tiered ticketing strategy in its home ground, in which the most expensive seats are typically more than ten times the cheapest. Some people would object on the basis that those with less ability to pay should have an equal chance of a good view. Many people would like us to have a more equal society in terms of income (I happen to be among them) but we have to live in the world as it is. If the alternative to a poor view is a uniform higher price that many individuals cannot afford, then surely the former is better.

- 3.23 The use of tiered pricing is less developed in music, although there are some established traditions in relation to larger events (e.g. standing versus seated at Hyde Park). There are also premium seat activities (such as “meet and greet”) and so on which serve a similar purpose, albeit with a lesser degree of tiering. Undoubtedly, seats near to the stage are more highly valued and there is some potential for differential pricing if it achieves consumer approval. Not all tickets will necessarily be priced at the same level. Pricing strategies will vary according to the layout of the venue and ticket sales strategy. So pop concerts have tended to be pitched at a single, dual or three prices level (depending, for example, on whether there is a floor or standing facility). This is very different to theatres, or opera houses which will have much strong differentials between seating according to the proximity of the stage. The Royal Opera House, for example, has a range of prices depending upon the seat location.⁶¹ There are, as always, popular music exceptions, such as Madonna, who had tickets at the Birmingham Barclaycard Arena priced at above £190 (arguably above comparable artists) down to £40 (lower than some other

⁶⁰ Ramsey pricing is a policy rule concerning what price a monopolist should set, in order to maximise social welfare, subject to a constraint on profit

⁶¹ For example, prices for season of performances of Tannhauser varied from £18 to £240 depending upon the seat location, <http://www.roh.org.uk/>

comparable artists). There can also be a certain superstar cachet, especially in terms of the media, in having the most expensive ticket. For example, tickets for One Direction became the most expensive to go on sale at the Glasgow SSE Hydro, succeeding Fleetwood Mac, although tickets ranged from £44 to £168. From the perspective of capturing income that would otherwise be lost to the secondary ticketing market, a greater use of tiered pricing is one potential tool available to event organisers.

Other Leisure Sectors

3.24 Publicly funded museums and galleries and other culture events may also price special exhibition tickets with social objectives in mind, reflecting Government's desire to increase participation across society, although there is often preferential access for those who have paid, sometimes a substantial sum, to be a "friend" or similar to the venue. For most such exhibitions, any mismatch between supply and demand can be smoothed out using timed ticketing. However, for a few blockbuster exhibitions (e.g. Leonardo da Vinci at the National Gallery) tickets do appear on the secondary ticketing market. The same may apply to short-run theatre performances, such as Benedict Cumberbatch in Hamlet at the Barbican.

Privileged Access to Tickets

3.25 The constitutions of sport governing bodies, such as the RFU and the ECB, have a bearing on tickets ostensibly distributed through their governance structure. I am thinking particularly here of individuals who have privileged access to ticketing for a major sporting event by virtue of their membership of a rugby or cricket club. If they cannot attend, it is, in my view, reasonable to expect such individuals should return tickets to their club for re-allocation within the sport. It is not reasonable that people allocated such tickets through membership should, under cover of anonymity, feel able to pass them to third parties for personal gain.

3.26 Such individuals will know full well that they have privileged access to ticketing and the terms under which this access has been granted. Should information come to light that they have sold on tickets for personal profit then, in my view, it is reasonable for sports clubs to seek to refuse such persons tickets for events in future years. This would not be unreasonable blacklisting of individuals in my opinion, as long as it was provided for in terms and conditions as required by the secondary ticketing provisions of the CRA. It also follows that it would be reasonable for sports bodies to seek to cancel the ticket and refuse admission to the unwitting, or more likely witting, purchaser of such tickets, as part of creating a deterrent against resale outside of the confines of the governance structure of a sport. Again, the CRA secondary ticketing provisions require there to be clear and relevant terms and conditions if cancellation is to be lawful on these grounds but, subject to that, I consider it reasonable of sports bodies to take this stance.

Staggered Ticket Release

3.27 Staggered ticket release is the practice of not releasing tickets all at once. This can be done over a period of time, by releasing on different platforms, releasing them in different forms or adding extra dates when the original allocation has sold out. Its intended purpose should be to allow a larger variety and number of consumers to purchase tickets at face value. By making available tickets in tranches, unsuccessful purchasers may be dissuaded from utilising the secondary market if they believe that better value for money can ultimately be achieved by waiting for further releases of tickets. It can be adopted as a strategy where venue capacity may be uncertain, enabling the event organiser to flex plans accordingly in subsequent tranches.

3.28 Staggered ticketing may also be an accepted part of the ticketing strategy. At Wimbledon, for example, there are three main ways of acquiring tickets: the annual ballot, the queue on the day and an online release of tickets through authorised channels every evening before the next round of matches. This works for Wimbledon.

Primary Ticketing Market Refunds and Returns

- 3.29 Typically, ticketing refunds on tickets are only facilitated in a limited number of situations and not at all for consumer “changes of mind”. This puts tickets at odds with many other internet transactions (distance selling). However, there are a number of exemptions from the right to cancel under distance selling regulations that reflect practical realities. For example, contracts arranged for a specific date, or a specific period such as bookings for catering, leisure services (e.g. event ticketing), transport (e.g. airline and rail tickets) and accommodation (e.g. hotel bookings) that do not give the consumer a right to cancel.
- 3.30 Tickets for an event tend to go on sale many months in advance, whilst the actual tickets (where physical) are still issued quite close to the event. This is despite the fact that the printing and delivery of the ticket itself, which used to be quite a task, has become a lot easier with the advent of technology. One reason for this, for high demand events, is a desire to discourage resale activity by making it more difficult for a purchaser with resale intentions to complete a resale transaction in the limited time window between receipt of ticket and event date. Other reasons may be linked to risk management, such as cash-flow, certainty on date and venue (if a premises licence for a festival has yet to be issued), or concerns that an artist may not complete an ambitious concert tour, requiring dates to be re-scheduled. There is also the assumption sitting behind this that a ticket is, at all times, the property of the event organiser and so they are under no obligation to make this available to the consumer any earlier than is strictly necessary to achieve admission to the venue. As a result, consumers are entering into commitments and paying for tickets months and sometimes a year ahead of actually receiving those tickets or attending an event.
- 3.31 This creates a problem for consumers who may subsequently find that one or more of the parties for whom they have bought named tickets are unable to attend. For example several respondents to the consumer survey (14%) reported that their financial circumstances had changed in between purchase and event, such as shortage of money, or an inability to fund the additional expenditure necessary to

travel to the event, meaning that they wished to sell. A subsequent inability to attend due to unforeseen circumstance may apply to a small, but not inconsiderable proportion of purchasers, perhaps 5% for some events, according to estimates we have received orally. Tickets are understood to be excluded from the consumer right to cancel⁶² and claim refunds applying to most other online sales but even if they were not, ticket sales are so far in advance of the event that it is unlikely that non-availability to attend would become apparent within normal refund timeframes. As a result there are limited options available to a consumer that wishes to get money back on one or more of the tickets they have bought. As one responder to the Call for Evidence observed:

“Buying tickets always seems to involve a very one sided contract. The seller can cancel the concert and refund (most of) the money paid but the buyer cannot get a refund if they cannot go.”

3.32 For events where the organiser cancels then, provided there are sufficient funds, a refund will become due. The STAR code says that, where events are cancelled by the organiser, refunds depend on the event promoter:

“If an event for which a Member has sold tickets is cancelled or not performed in full and such cancellation or non-performance leads the Event Promoter to agree that ticket monies should be refunded, the Member shall issue a refund of at least the face value price paid or, if the face value has been reduced by the organiser, the discounted face value price paid, to each customer.”

3.33 This is a position taken elsewhere too. For example, a similar but clearer approach is embedded in the Australian “Ticketing code of conduct”⁶³ under which refunds may only be requested if an event:

- is cancelled altogether

⁶² Consumer Rights Directive, http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/index_en.htm

⁶³ http://www.liveperformance.com.au/ticketing_code_practice

- is postponed to a future date to be agreed
- is rescheduled to a new date
- is significantly relocated from the area of the originally advertised event.

3.34 Where refunds are offered, or provided, the amount may be restricted to the face value purchase price of the ticket and not include any fees or charges levied at the time of booking. This is because the contracted service covered by the fees has been completed and the subsequent refund is a separate matter to which the ticketing agent is not a party.

Primary Sales: Ticket Returns

3.35 Certain event organisers may allow for “returns”, wherein they will themselves offer to sell the purchaser’s tickets to other customers, but there is no guarantee that a sale will be achieved and there may be an administrative charge for this service. From the event organiser’s perspective there will be an incentive to prioritise new sales over the sale of returns so returns may only lead to the original purchaser being reimbursed where a “sell-out” is likely.

3.36 An alternative (proposed as mandatory by some respondents to the Call for Evidence) is for event organisers to offer to accept returns, repay the original purchaser, and then resell the tickets through the primary ticketing market again. Some have proposed that this be limited to a “cooling off period”, similar in length to that associated with other internet sales. There are risks for primary sellers if they offer to accept returns. Many have said that they risk underwriting people who have bought tickets with the express intention of reselling them.

3.37 Accepting returns will give such purchasers a risk-free opportunity to sell tickets at a profit knowing that they can get their money back from the event organisers if the tickets do not sell. Rather than reducing the volume of ticket resales, there would be a reduction in the risk of potential losses for the prospective reseller, making buying tickets with the express intention of reselling more attractive and likely.

- 3.38 If this is true then the principal beneficiaries of a returns policy will be the regular ticket resellers, not the 5% or so of customers that find themselves unable to attend an event that they have booked for. Moreover, there would need to be some sort of cut-off period to enable the event organiser to resell the ticket, so those with last minute problems preventing their attendance would probably still lose out, even if an event accepted returns. Specialist events, such as Wimbledon and Glastonbury, are able to facilitate last minute returns because of demand and a willingness to generate income from onsite box office sales, with people queuing on the day for tickets. A ready market is therefore available for last minute returns.
- 3.39 Concert promoters could be particularly affected by events accepting customer returns. As discussed previously, they are the principal risk takers and as a result, their income and profits would be very vulnerable to late returns which may be caused by a sudden loss of popularity of an artist, change of band line up or bad publicity about early dates in a tour. Promoters are very reluctant to agree to accept returns, and this is built into contracts with venues, who as a consequence may have only limited discretion.

Primary Ticketing Refunds and Terms and Conditions

- 3.40 Where there is a restriction on returning tickets for refund this is set out in ticketing terms and conditions. In some cases, not only can a ticket not be refunded in the event of a change of circumstances for the purchaser, but it cannot be “transferred” either.
- 3.41 I consider that there is a balance to be struck between, on the one hand, allowing event organisers to set terms and conditions on resale as part of determining how best to distribute tickets and on the other, protecting the interests of ticket purchasing consumers through allowing some elements of ticket transferability.
- 3.42 Refusing refunds or exchanges has a relationship to the consumer’s desire to resell tickets they can no longer use. Prohibiting transferability theoretically prevents the option of reselling the ticket to another party as a way of recouping money should a consumer be unable to use a ticket. For example, transferability can be prevented by printing the purchaser’s surname on the ticket and requiring some form of ID to be produced when entering the venue. However this policy may not always be enforced at venue as is discussed in Chapter 4.

Refunds via Authorised Resale

- 3.43 For high demand events, particularly sporting events, organisers have introduced the concept of authorised resale provision, whereby the original purchaser is permitted to resell a ticket using an online marketplace specified by the event organiser. This may be one of the major secondary ticketing platforms (as is the case with some football and rugby clubs) or through the original platform (as was the case with the London Olympics and the Rugby World Cup in 2015). In these cases the resale price of the tickets being resold is controlled by the event organiser and is often restricted to the face value of the ticket. Having a resale option for tournaments such as the Rugby World Cup is important due to the unpredictability as to which teams might progress and the need to get the tickets to the relevant fan sets.

Role of Insurance

- 3.44 Some ticket selling agents have started to offer consumers insurance such as Ticketmaster's Missed Event Insurance. These are provided by third parties and are offered only at the time of the ticket purchase. For a one-off fee (normally per ticket) they offer some limited protection if specified reasons apply. Insurance will not cover foreseen circumstances and changes of mind and cover may not be available if unavoidable obligations such as job requirements mean that a consumer is no longer able to attend.
- 3.45 Insurance may help in certain circumstances, but it is not a complete solution for consumers and requires an additional fee on top of the cost of the ticket itself. Even where the cost of insurance is relatively minimal in comparison to the cost of a multi-day festival ticket, I was advised that less than 50% of consumers take it up.

Conclusions

- 3.46 Many of the problems relate essentially to the primary ticketing market, and its interactions with the secondary ticketing market, particularly as regards music. Whilst the primary ticketing market is not the direct focus of my review as set out in the Terms of Reference, it is clear to me that measures taken in the primary ticketing market would significantly reduce problems arising in the secondary ticketing market that affect consumers. Moreover, without reform, some sectors of the primary ticketing market run the risk of dwindling consumer confidence or confusing consumers with the result that they make decisions they would otherwise avoid.
- 3.47 For many events, there are several primary sellers. Event organisers should be more transparent as to whether this is the case, listing official primary sellers and cautioning against unauthorised primary sites that are bogus. Otherwise consumers are likely to be confused regarding primary ticket sales and may end up paying more than they otherwise would need to.

- 3.48 Primary ticketing sellers also need to be more transparent about the extent to which a “general sale” is in fact a sale of the whole venue’s tickets. It is clear that in many cases, only a minority of tickets is actually available for purchase at the time of the general sale, leading many people to waste time in trying to access them, and possibly to panic buy. Presales, corporate tie-ups, priority booking, premium tickets and so on are commonly taken out of sale prior to the time of the general sale. If a large proportion of the desirable seats has already been sold, consumers’ time on the primary website may simply be wasted.
- 3.49 There must be a fundamental recognition by all participants in the primary ticketing market that pricing, ticketing and venue control are intimately linked, and actions taken in response. This does not mean that they need to be controlled by the same organisation. Nor does it mean that artists who wish to set particular prices for an event should be constrained from doing so. Many people on all sides of the market benefit from relatively low event prices and full venues. However, it does mean, for example, that if ticket prices are set below what the market will bear, the ticketing strategy and venue control strategy should be designed in the light of this. This is why the Glastonbury model works. Prices clearly below what the market will bear are a magnet for touts, so that in the absence of constraints on ticketing purchases in particular, a great many tickets will move almost immediately onto the secondary ticketing market, where prices may be higher and where the buyer will pay additional fees. A range of tools are available to the primary market to influence what happens in the secondary market and should be used.
- 3.50 I also feel event organisers should seriously consider whether a more differentiated price structure within the venue than has been traditional, particularly in music, would allow cheaper prices for some seats than a relatively flat price structure achieving the same revenue, hence allowing an audience with a greater range of willingness to pay to attend the event. Here actually, the secondary ticketing market provides an incidental service to the primary ticketing market through its role as a price discovery mechanism⁶⁴ relating to tickets in different locations within a venue. I

⁶⁴ By this I mean a mechanism for determining what a market clearing price for a particular location is likely to be.

do not wish to be prescriptive about this, but I express the hope that the primary industry will develop models which better achieve the twin aims of maximising attendance and allowing individuals with a range of means to attend. Alternatively, organisers could operate a ballot for seats for events they believe likely to have excess demand.

Recommendations:

- **Recommendation 4:** I recommend that, with Government assistance, the primary ticket industry as a whole forms a project group to examine and to standardise, to a considerable degree, the way in which information on the full range of primary ticket outlets, previous or forthcoming opportunities to buy for the same event and the manner in which clear pricing information including compulsory charges is displayed. It should also consider the presentation of information on availability and conditions under which refunds are offered. These discussions should take into consideration existing consumer law protections, including in relation to the provision of information, unfair terms and unfair commercial practices.
- **Recommendation 5:** If the industry fails to form such a project group of its own accord and implement recommendations as necessary within a reasonable period, I recommend that Ministers call a roundtable for the various primary industry participants.

Chapter 4. Potential and Actual Restrictions on Ticket Resale

Summary:

In this chapter, I consider how the primary ticketing market operates in terms of the contractual restrictions on ticket resale, how such restrictions operate in practice, and whether policies that prevent or limit ticket resale are fair and legitimate. I also consider the enforcement of ticketing conditions as part of venue control. Further, I consider speculative practices in the market, and the relationship between debentures and ticketing.

Key points:

- I consider that where a major artist or event organiser desires to impose restrictions on the transferability of ticketing, then it is incumbent on that artist or event organiser to ensure, through contractual means, that the venue operator will enforce such a restriction at entry points, in a reasonable manner, so as not to cast doubt on the validity of the transferability restriction as a fair term and condition of the ticket.
- I believe that reputable secondary ticketing platforms should develop and publish principles as to when a resale market can reasonably be said to have come into existence and hence when tickets will be accepted for listing for resale.
- I consider that in order to maintain public trust and openness in how tickets are distributed, venues with debenture holders should, via the internet, and subject to their obligations under data protection law, publish details of the ticketing entitlement that accrues to each type of debenture holder.
- I believe that the CMA should consider further what a ticket constitutes and whether further guidance is desirable on the practical application of the CRA

with regard to ticketing and unfair terms. If ultimately the CMA is unable to reach a consensus on such guidance with the live event industry and other stakeholders, then it may prove necessary for the BIS to ask the Law Commission and Scottish Law Commission to conduct a review into ticketing with a view to clarifying the legislation.

Are Restrictions Preventing Resale Fair?

- 4.1 As discussed in Chapter 2 of the Report, Part 2 of the CRA sets out provisions relating to unfair contract terms between traders and consumers. The CMA has issued general guidance on the unfair terms provisions of the Act⁶⁵. Of particular note, is paragraph 5.33.4 of the CMA's Guidance that cross-references the secondary ticketing provisions in Part 3, Chapter 5 of the Act:

“The reselling of tickets remains permitted, but where it takes place online, certain information must be provided. The Act expressly requires that a term which allows an event organiser, where a ticket is being resold or offered for resale, to cancel it or blacklist the seller must meet the requirements of Part 2 of the Act. In other words, it makes such terms subject to the usual tests of fairness and transparency. As indicated above, it is the CMA's view that a term which undermines a consumer's right to sell what they own is at risk of being regarded as unfair.”

- 4.2 It is these issues of fairness and transparency that are at the heart of the debate on what is a fair or unfair contract in ticketing from both the perspective of the consumer and that of the trader (i.e. the event organiser and their ticketing agent).

⁶⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf

4.3 From an event organiser's perspective, ticket resales tend to be perceived as either:

- “authorised” - that is, done with authority of the venue, sporting body, artist or promoter, and includes authorised ticketing agents, individuals and vendors, potentially on both primary and secondary ticketing markets;
- “unauthorised” - i.e. without the authority of the venue, sporting body, artist or promoter.

4.4 It is these “unauthorised” sales that event organisers are more likely to consider to be in contravention of any contractual terms relating to their event (including terms and conditions regarding ticket resale), with the risk that a ticket may not be accepted by the venue.

4.5 As noted in Chapter 2 of this report, the legal status of a ticket is unclear. There is insufficient case law on what purchasing a ticket confers on the purchaser in terms of rights or responsibilities and whether and in what circumstances a ticket can lawfully be transferred to another party. Much would depend on the specific contractual terms, as some tickets (e.g. debenture tickets) are clearly highly transferable, but for others, “ticket transfer” may be restricted to just family members sharing the same surname as the ticket purchaser.

4.6 As considered in Chapter 2, sporting bodies tend to favour a legal definition of a ticket as a personal revocable licence granted to a purchasing consumer. This was the definition set out in the ticketing terms and conditions for London Olympic and Paralympic Games in 2012:

“Ticket” means evidence of a personal revocable licence from LOCOG66 for an individual to attend and to occupy space or a seat at a session(s).

- 4.7 Those responsible for events argue that a ticket is a right to be present at an event or performance (a right of admission). They view a ticket as representing the contract between the event organiser and the individual, in effect a licence that is granted that is personal to the individual purchaser, subject to terms and conditions. Where a ticket is resold, the event organiser considers that it is within their rights to refuse entry to the new buyer because the licence represented by that ticket is personal to the original buyer and cannot (subject to terms and conditions) be transferred to the new buyer.
- 4.8 However, not all forms of resale will be deemed a breach of contract. For example, the RFU's terms and conditions (printed on the ticket and elsewhere) state that only the advertisement of a ticket *above face value* constitutes a breach of the contract between itself and the purchaser, and that a breach of that term renders the ticket null and void. In essence, the argument is that the RFU, as the event organiser, has the right to prohibit the transfer of its tickets at prices above the face value and hence a right to decline admission to a ticket holder where the acquisition of the ticket was in breach of terms and conditions.
- 4.9 Event organisers in both oral and written evidence to me considered that where resale was contrary to ticketing terms and conditions, they had the right to refuse to admission to a new buyer of the ticket as the entertainment venue was invariably private property. It was put to me during my review that a private property parallel could be drawn with a right to remove customers from a venue where terms and conditions of admission were breached. For example, nuisance behaviour or the use of recording equipment in an auditorium. A ticket was evidence of a right to entry, but it was a right of entry at the discretion of the issuer.
- 4.10 In contrast, the secondary ticketing companies submitted evidence that tickets were akin to other consumer goods and as such could be traded, and that event organisers could not impose conditions dictating what the consumer could, or could not, do with their property after a sale had taken place. From the perspective of businesses providing a secondary ticketing market, tickets are no different from other goods and services. Hence, they took the view that a consumer looking to resell a ticket cannot be bound by what they considered to be unfair conditions of an

original sale and referenced paragraph 5.33.4 of the CMA's Guidance. As a consequence, companies in the secondary ticketing market took the view that they were entitled to offer a resale service to consumers.

- 4.11 I suspect a personal revocable licence is not the public's understanding of a ticket and so it is therefore incumbent on those who consider "tickets" to have this status to make this clear when issuing them, including in what circumstances the licence is revocable. Fairness to the consumer is important here, as I suspect that the public's understanding is that a ticket, whether paper or electronic, is something that *guarantees* the holder (not necessarily the original purchaser) of the ticket entrance to the event in question. Going forward, the ticketing industry might wish to distinguish between different classes of ticket - one that is strictly personal to the holder with no refund, or one potentially offered at a higher price with the possibility of obtaining a refund up to some point in time before the event. For example, hotel rooms are often sold on both these bases.
- 4.12 There is also an important related issue here. Terms and conditions are routinely not read by the consumer, with all that implies in terms of consumers being unaware of their contents. It seems to me that the public's lack of awareness of ticketing conditions is probably related to a view that ticketing terms and conditions are largely inconsequential and non-binding – as the consumer's experience, even when in breach of such terms, is that admission is rarely refused unless that breach is blatant and fraudulent (e.g. adult seeking admission on a reduced price child ticket).
- 4.13 My view is that ticketing conditions related to resale should be reasonable, proportionate, enforceable and clear in what they intend to achieve. However, there also needs to be some effort made by those imposing the conditions to enforce said conditions if they are to have validity in the eyes of the consumer. At one end of the scale, there are terms and conditions that do not allow for any ticket resale, transfer or refund. This is not unique to event tickets and can apply in other sectors, such as air travel. In the middle of the scale, there is permitted transfer or resale – for example, only at face value, or to certain specified individuals. This can be via a dedicated resale platform linked to the event organiser (such as for the 2015 Rugby World Cup) or a partnership arrangement with an independent platform, such as

Twickets or Scarlet Mist. And at the other end of the scale, there is the view that any condition restricting resale is an unfair condition for the consumer and therefore invalid and unenforceable.

- 4.14 “No resale, transfer or refund” condition is the most problematic. To comply with consumer legislation, any such condition must be brought to the notice of the purchaser before the online transaction is completed. To increase transparency for the consumer, I would suggest as a matter of good practice that such a notice needs to incorporate a short justification for the imposition of the condition linked to the intentions behind an event organiser’s policy. Greater transparency might increase the chances of a court finding that the contractual restriction was fair in the circumstances, as opposed to a situation where the consumer merely ticked a box that they had “read and understood” all the terms that apply.
- 4.15 While it is argued that a breach of a resale condition is a breach of contract, event holders and performers do not tend to seek redress other than by cancelling the ticket where deemed appropriate. It is argued that it is too expensive and time consuming for sport bodies and artists to commence legal proceedings to pursue their contractual rights against those who commit unauthorised resale, especially where the resale operation is based outside the UK. This stands in contrast to a seeming greater willingness to institute proceedings for breaches of intellectual property, although sport bodies have issued “cease and desist” letters to individual sellers, seeking the removal of tickets for resale as part of protecting their broader intellectual property rights.
- 4.16 Where the event organiser offers the option of authorised resale, then this further strengthens the entitlement to enforce a “no resale, transfer or refund condition” in relation to other types of resale. This may be the preferred option for high demand events, as in carrying out my review, I am not convinced that fans of sport or music are truly supportive of 100% “no resale” conditions.
- 4.17 So there is a balance to be struck between, on the one hand, allowing event organisers to set terms and conditions on resale as part of determining how best to distribute tickets and on the other, protecting the interests of ticket purchasing

consumers through allowing some elements of ticket transferability. Ideally, the inherent conflict between event organisers viewing tickets “sold” as being their property (because it is a right of admission) and the consumer who likewise views the purchased ticket as their personal property, to dispose of as they see fit, needs to be resolved. It is by no means clear to the consumer, or the issuer, what an entertainment or sporting ticket represents and while legalistic comparisons with other goods or services were put to me during the course of my review, there is ultimately insufficient case law on event ticketing itself to provide certainty.

- 4.18 As the principal regulator and issuer of guidance with respect to the unfair terms provisions in the CRA, I would like to see the CMA consider in further depth what a ticket constitutes in the round and whether further guidance is desirable on the practical application of the CRA with regard to ticketing and unfair terms. At present, I believe there is too much conjecture and not enough guidance. If ultimately the CMA is unable to reach a consensus on such guidance with the live event industry and other stakeholders, then it may prove necessary for the Department for Business, Innovation and Skills (BIS) to ask the Law Commission and Scottish Law Commission to conduct a review into ticketing with a view to reviewing and clarifying legislation.

Enforcement of Ticket Terms and Conditions at Venue

- 4.19 Some event organisers and artists have tried to interdict the resale market (and prohibit authorised resale) by using more stringent terms and conditions that associate the ticket more clearly with the original purchaser. This includes putting the name of the purchaser on the ticket (or lead purchaser for a group of tickets) and requiring them to show photo-ID, or the debit or credit card used to purchase the tickets, at the entrance to the venue. Some venues, like Glastonbury, go further by putting the consumer’s picture on the ticket so that this can be checked against the user at the entrance.

- 4.20 From a Glastonbury perspective, photo ID has been successful partly due to the popularity of the event, partly because it has complete control over the ticketing process and venue, and partly because there is wide acceptance of the ID requirement by its customer base. Customers are willing to enter a pre-registration process and provide a picture that can be added to the ticket should they be successful in the application process. This approach, coupled with a vigorous policing of the ticket ID verification on the gates, means that Glastonbury tickets do not appear on the mainstream secondary ticketing market sites.
- 4.21 Another example has been major football tournaments where fans buying tickets are told that to gain admission they must carry a passport or ID-card to demonstrate that they are the named party on the ticket. As with the domestic legislation related to football and ticketing discussed in Chapter 1, the primary motive for organisers is one of public order through ensuring crowd segregation.
- 4.22 Checking individual ticket holders is a time consuming activity and can be accomplished more easily at events with staggered entry over time, such as multi-day music festivals. Such staggering over a number of hours (or days) is not typical. Football fans, for instance, do not typically arrive at stadia many hours before a game. Such events require swift ingress to ensure public safety, avoid customer dissatisfaction, and facilitate the game starting on time. As a result, major stadia have invested in turnstiles that work from the dynamic bar coding on the ticket to speed up a secure entry process. Were there to be a requirement to check ID at the same time as tickets, then ticketing “disputes” would have the scope to cause critical delays with potentially serious consequences.
- 4.23 It was suggested to me that while modern venues could offer concert promoters both identity-check and card swipe technologies to artists who wished to police ticketing conditions at their events, this came at an additional manpower cost because of the overriding need to allow safe ingress to the venue. I received evidence that, at most, a venue could only routinely check 1 in 25 of tickets at ingress where the artist and promoter had stipulated some form of ID checking.

- 4.24 It is important that the ticketing strategy for an event includes considerations of entry control. For identity checking to be deployed at venue (and be effective as a deterrent to resale) the artist or promoter must be sufficiently committed to its policy of checking entrants' ID to want to pay for it. There is evidence that more artists are becoming willing to do so, but it is not currently the norm.
- 4.25 Instances arise where any ticket purchasing limit is not well enforced are commonplace, so that it becomes more akin to a maximum of four (say) tickets per transaction rather than "four tickets for the event". The fact that there are several primary sellers, whose systems are not usually linked, is another means by which numerical limits do not work. Circumventing contractual terms in this way may be unlawful, but the lack of stricture undermines the ticketing strategy, leading to tickets becoming available to the secondary ticketing market, either "by hand" or through "botnet" usage.
- 4.26 If restriction and entry checks are to be applied (even on a sample basis) there is a question as to what information must be provided by the reseller of such a ticket in respect of such restrictions. Named tickets, photo ID, or debit or credit card verification would all seem to be material information that a seller should provide to the consumer in both the primary and secondary ticketing markets. The secondary ticketing provisions of the CRA require that the buyer must be given "information about any restriction which limits use of the ticket to persons of a particular description". In my view, such information would include whether a ticket can only be used by a named individual. Purchasers using secondary ticketing platforms should, therefore, be made aware of such restrictions and the impact it may have on their ability to use the ticket. I discuss the extent to which resellers and secondary ticketing platforms are fulfilling their obligations under the CRA in Chapter 2.
- 4.27 Another type of ticket limit concerns the concept of a "lead booker", as has occurred with the 2016 Bruce Springsteen UK tour. Here, if more than one ticket is purchased, access to the venue is stated to be possible only in the company of the "lead booker", who must demonstrate their identity. Anyone not accompanying the lead booker will not be able to gain access even if a ticket is otherwise valid. This would similarly seem to be information that should be shared with potential purchasers in

accordance with the secondary ticketing provisions of the CRA. This sort of condition usually results in resellers having to attend the event themselves and meet up with the full group of people they have sold tickets to in order to gain them access to the event. A small number of respondents to the Call for Evidence were candid about their own experiences. For example, one respondent said:

“I was unable to obtain a ticket for the Kate Bush concerts and so was left no alternative to pay £450.00 for a face value ticket which was £127.00. I purchased it from a man on Facebook and unfortunately had to meet him and his wife at the gig because of the requirement of having to enter with the named ticket holder. The man who sold me the ticket claimed friends had dropped out which frankly I do not believe! I was delighted to get a ticket but it has left a bitter taste knowing that someone was able to make money in this way.”

- 4.28 Whilst entry check at ingress is difficult, there are upstream options to reduce potential resale activity. Adele’s management sought to check the validity of presale activity to members of the fan club and screened these against incidents of multiple or “botnet” purchases. Adele’s management were clear in their intent to police the ticketing inventory in this way and it meant that some purchases were subsequently cancelled and payment refunded because transactions failed their detailed scrutiny. There do not appear to have been any concerted effort to challenge such actions by those that had the ticket purchases rejected. Those tickets were then offered to other purchasers that met the criteria.
- 4.29 In order to be able to do this, Adele’s management would have required dedicated and expert resources to look for such things as common addresses, card holder names or IP addresses and then to reject sales. It was also necessary to commit the resource to check sufficient tickets at the venue for it to have an impact on behaviour. For most artists and promoters, this is currently more effort than they deem appropriate - given the overarching goal is to sell tickets and make money from the tour. It remains to be seen whether profit margins will allow other artists to adopt similar strategies to those employed by Adele, or whether market conditions and the differing objectives and incentives for artists, concert promoters and venues

will mitigate against others following suit.

- 4.30 I consider that where a major artist or event organiser desires to impose restrictions on the transferability of a ticket, then it is incumbent on that artist or event organiser to ensure, through contractual means, that the venue operator will enforce such a ticketing restriction at entry points, in a reasonable manner. If the venue operator is not obliged to enforce such a restriction, then that could call into question the effectiveness of the ticketing restriction on non-transferability as a deterrent to the resale of the ticket itself.

Speculative Offers for Sale

- 4.31 There is also the possibility of speculative offers for sale – common in areas such as commodity markets. If someone is confident in their ability to secure tickets, they may be willing to list this prospect on the secondary ticketing market before the tickets are actually acquired. This speculation comes at a risk for the would-be reseller in the event of the anticipated tickets not becoming available to them. In such a scenario, they face the prospect of having to find an alternative source of tickets to meet their obligations and there is no guarantee that these could be found at a price below that at which they have committed to supply the tickets. The major ticketing resale platforms provide guarantees to their customers to protect them, so that where a transaction is not fulfilled, the cost of this to the platform is passed on to the vendor who failed to provide the promised tickets, often with a penalty added.
- 4.32 When is a ticket listing on a secondary ticketing platform speculative? It has been suggested to me that if the route by which tickets will come to market has yet to be made public by the event organiser, then a ticket listed for resale is speculative, as ticket pricing will not have been announced. An alternative view is that a ticket listing is not necessarily speculative if the event date is known and contractual relationships with rights-holders, such as broadcasters, exist. It has been suggested to me that where commercial sponsors have signed deals that include access to the ticketing inventory, then a secondary ticketing market for tickets for the event could be said to

exist even if pricing of the ticket inventory has yet to be announced. I also received views that speculation equated to tickets being listed for sale before the seller actually owned the ticket, although talk of ownership, as discussed previously, raises the thorny question of what a ticket intrinsically is.

- 4.33 Futures markets exist in many areas of commerce. Quoting from Wikipedia, “A futures exchange or futures market is a central financial exchange where people can trade standardised futures contracts; that is, a contract to buy specific quantities of commodity or financial instrument at a specified price with delivery set at a specified time in the future.” Commodity futures, such as pork bellies and copper wire bars, have a history of being traded through organised central markets such as the Chicago Board of Trade and the London Metal Exchange. More recently, futures markets have developed in areas such as wholesale electricity, for risk management purposes, although here the mechanisms through which interested parties may determine an estimate of likely transaction prices are not as straightforward. Most traders in these types of markets do not wish either to sell or to buy, but simply trade, and will therefore seek to zero their position before delivery, if necessary at a loss.
- 4.34 A key feature of (lasting) organised futures exchanges is that the traders are known and reputable bodies, whose reputation and ultimately livelihood depends upon honouring the contracts they write. Moreover, the commodities are precisely defined and so absolutely homogenous. Margins are commonly remarkably thin, possibly fractions of a percent.
- 4.35 These features provide a significant contrast with speculative ticket sales for live entertainment. In the case of tickets, the product is not homogenous (different seats from those contracted are not the same object, nor are seats for a different night, and two seats some way apart are not the same as two together). The sellers are also anonymous (although the platform is not) and are not subject to an established ratings system; nor are they responsible to a regulator.

- 4.36 With live entertainment, the buyer on the secondary ticketing market is unsighted on the degree of speculation embarked upon by the reseller. As a result, the consumer may incur significant additional expenditure in advance for the purpose of travelling to the event. Hence potential non-delivery of a ticket is not cost-neutral to the prospective purchaser in almost all cases, as while the ticket cost may be refunded, the totality of incidental costs will not be.
- 4.37 For these reasons, I am not supportive of the idea that a futures market can exist in ticketing. However, I am also not attracted to the polar opposite idea that being in physical possession of the ticket is a necessary pre-requisite of being able to list it for resale. For instance, persons with debenture seats have certainty on receiving tickets for events at a particular venue and so the resale of such tickets, in advance of physical receipt, is not unreasonably speculative. However, in general, the listing of tickets for resale before any evidence of presale activity, or pricing of the inventory, should be regarded as speculative sharp practice that is not in the best interests of the consumer, or the reputation of a secondary ticketing market.
- 4.38 I would like to see the platforms develop some principles as to when a resale market can reasonably be said to have come into existence and hence when tickets will be accepted for resale. The placing of such principles in the public domain would help to reassure consumers that platforms do exercise due diligence in deciding at what point in time it is reasonable to state that a resale marketplace for a particular event exists.
- 4.39 When does speculation become fraud? As discussed in Chapter 2 if, the speculative seller never had an intention to source and supply a ticket they had listed for sale, that could be considered as fraud if they had dishonestly made a false representation with the intention of making a gain or causing loss. Demonstrating dishonesty and intent can be difficult but the police have had success, in cooperation with internet domain registrars, in tackling internet sites that purport to sell tickets for which they could have no legitimate expectation of accessing. Such disruptive action can range from modifying behaviour of the website concerned through to taking the website down, depending on the level of co-operation received from an internet domain registrar in another jurisdiction

- 4.40 So, while I strongly discourage sharp speculative practice, it does not seem to me to be something that can be easily proscribed by legislation, due to the difficulty of demonstrating that a speculative ticket listing has been made. However, the development of some principles with regard to the initiation of the secondary ticketing market for an event would be a step towards greater transparency with respect to tickets listed prior to the “buzz” of any general public sale. A set of principles would help demonstrate to the consumer that resale marketplaces are vigilant about unscrupulous practices and will stop at source those listings regarded as highly speculative. I would hope that there could be cross-industry cooperation on this issue that would assist with what I believe was one of the objectives that lay behind the CRA - that sales that are wholly speculative should not be allowed.
- 4.41 I consider that reputable secondary ticketing platforms should develop and publish some principles as to when a resale market can reasonably be said to have started and hence when tickets will be accepted for listing for resale.

Debentures

- 4.42 One area of ticketing where there is some read-across to financial markets is debentures. These are typically issued to raise finance and in return give the fan or investor an ownership stake in the club, organisation, or venue. For example, they may guarantee seats in return for an investment in the infrastructure of a venue. Seats provided to debenture holders may not come with the same restrictions and terms as other ticket sales.
- 4.43 A high profile debenture is that issued by The All England Lawn Tennis Ground plc for Centre Court and No.1 Court to fund the continuing development of the facilities at the grounds at Wimbledon. For each debenture held, the holder receives one seat in the Centre Court stand for every day of The Championships; or one seat in the No.1 Court stand for the first 10 days of The Championships. Tickets allocated to debenture holders are freely transferable and can be sold on the open market.

- 4.44 Another long standing example of debentures is the Royal Albert Hall, where members are individual or corporate owners of seats in the Hall, following in the tradition of those who subscribed capital to fund the Hall's original construction. Members can sell their seats through the box office or on the open market.
- 4.45 Debentures with differing entitlements to ticketing also exist in relation to a number of major rugby, cricket and football stadia that have either been built, or re-developed in recent years - for example, Twickenham, Lord's and Wembley. There may be restrictions as to whom a debenture (and its associated rights to ticketing) may be sold in line with a desire that investors have a relationship with the sport in question. Where there are no restrictions on trading, an uncomfortable tension can arise between tickets associated with seat or debenture ownership being freely tradable as private property and the ticketing policy of the venue that may not provide for resale or refund of tickets for consumers more generally.

Recommendations:

- **Recommendation 9: I recommend that the ticketing industry continues to develop comprehensive approaches, such as a common standard for confirming the authenticity of tickets and common terms, and to improve consumer awareness of the standards and their benefits. Again, this would have benefits in reducing consumer confusion.**

Chapter 5. Secondary Ticketing Market

Summary:

In this section I describe what I mean by the secondary ticketing market, its nature, scale and scope. I discuss how tickets come on to the secondary ticketing market in the first place, who uses this market and to what extent it provides a service and benefits to consumers more generally. I also discuss the potential role for cross-industry action and codes of practice.

Key points:

- I believe that secondary ticketing platforms should ensure they and the resellers using their platforms comply with the provisions set out in the CRA.
- I remind secondary ticketing platforms it is their legal obligation to report criminal activity (particularly fraud) on their sites.
- In my view “traders” need to be identified - secondary ticketing sites should take more responsibility for ensuring that “traders” (including their regular “power sellers” and the like) have identified themselves as such, as opposed to individual resellers, since consumers have rights against “traders” that extend beyond the secondary ticketing provisions of the CRA.
- I believe that fans looking to recoup the cost of a ticket they can no longer use should consider whether a face value resale platform would meet their needs.
- I consider that secondary ticketing platforms should provide clearer details of their guarantees on their websites in order to improve transparency for ticket buyers.

The Nature of the Secondary Ticketing Market

5.1 There are many different types of operator in the secondary ticketing market, with some intermediaries operating online, others having physical premises, or advertising in the press, whilst still others provide packages, for example, involving hospitality and travel. My review is focused on the online resale platforms rather than other types of secondary ticket sales. However, the variety of business models the details of which a consumer may be unaware, may lead to the consumer being uncertain about how to differentiate between a primary and secondary seller. Commercial arrangements between sporting bodies and secondary ticketing platforms, most notably in football and rugby, are also impacting upon the business model of the secondary ticketing platform, with resale revenue being returned or shared with the sporting body concerned where tickets on the primary ticketing market have sold out. This evolution may further confuse the consumer as to the function being performed by a secondary ticketing market across a variety of ticketed events.

5.2 I describe below the different types of operator enabling online ticket resales.

Event Organiser Resales

5.3 Firstly, there is resale by the original vendor, with the event organiser themselves offering a resale opportunity to purchasers. Chelsea and Arsenal are examples of football clubs that run their own in-house online ticket exchange services. However, some purchasers may be reluctant to operate through this route because the event organiser and ticket agent may privilege new sales as against secondary ticketing sales to maximise revenue. Further, certain events do not lend themselves to refund or resale in advance. An example is cricket, where a bad weather forecast could in theory lead to wholesale ticket returns. As it is, major cricket matches have an after-the-event refund policy to cater for restricted play due to weather conditions.

Face Value Resale

5.4 Secondly, there are “fair exchange” platforms. Twickets and Scarlet Mist⁶⁷ are two that have come to my attention. These operate on relatively thin margins dealing with individuals who wish to trade-in their tickets, normally at face value or less (plus fees) due to changed circumstances. For example, Twickets charges the secondary buyer a 10% fee for using the site, while Scarlet Mist is a user-to-user service bringing would-be buyers and sellers together, in the style of a dating agency. The Scarlet Mist site is funded through advertising. It was surprising to me that such face value resale sites attract relatively small share of tickets, as suggested by the consumer survey given that they constitute what many consumers would define as an ethical secondary trade, recycling tickets to other fans. A great many respondents to the Call for Evidence described moral outrage at tickets being priced significantly above face value, but this does not appear to have translated itself extensively to consumers recycling their unwanted tickets through such platforms. This may say something about the real rather than perceived position of consumers on resale above face value, but I encourage consumers, who find themselves with tickets they can no longer use to consider whether a face value resale platform could meet their needs.

Online Commercial Ticketing Platforms

5.5 Thirdly, there are commercial secondary trading sites, the best known of which in the UK are GETMEIN! and Seatwave (both owned by Ticketmaster), StubHub (an eBay company) and Viagogo. All these operate as intermediary platforms between sellers and buyers, charging higher margins than fair exchange platforms on average. They have an incentive to make money by selling large volumes of tickets.

5.6 GETMEIN! was launched in 2003 and developed its business in the UK. It was a member of the Association of Secondary Ticketing Agents (ASTA) until acquired by Ticketmaster in 2008.

⁶⁷ <https://www.twickets.co.uk/>, <http://www.scarletmist.com/>

- 5.7 Viagogo was launched in 2006, establishing itself in the UK, Netherlands and Germany, with a view to establishing a leadership position in the European market in the same manner that StubHub had achieved in the USA. Viagogo's sporting partnerships (where they are effectively acting as official ticket providers reselling on behalf of the event organisers) include the Grand National, Scottish Rugby Football Union, ATP World Tour Finals in tennis, Manchester City and hospitality packages at Manchester United.
- 5.8 A further Ticketmaster acquisition was Seatwave, originally launched in 2007, which developed a strong market share across Western Europe before being acquired in 2014. Seatwave is the Welsh Rugby Football Union's (WRU) resale partner for international matches at the Principality Stadium (formerly the Millennium Stadium) following on from Ticketmaster being the WRU's primary ticketing partner. In 2015, the CMA investigated the acquisition of Seatwave by Ticketmaster, but concluded that the acquisition did not give rise to a realistic prospect of a substantial lessening of competition, largely due to the strong competition from Viagogo and StubHub.
- 5.9 StubHub entered the UK market in 2012 and has a number of partnerships with stakeholders including AEG (O2 and Wembley Arena), AXS ticketing, Tottenham Hotspur and Everton. It took over ticket selling that was previously carried out on its parent company site, eBay.
- 5.10 Other online secondary ticketing sites through which tickets for UK events are bought and sold include Ticketbis (Spain) and Worldticketshop (Netherlands).
- 5.11 It is the four major marketplaces (GETMEIN!, Viagogo, StubHub and Seatwave) that most commentators think of as providing an online secondary ticketing market for consumers for UK ticketed events. The companies concerned consider that they are now an accepted part of the ticketing and e-commerce sectors, backed as they are by investors, including venture capitalists. They argue that they bear no relationship to traditional ticket touts, as the online secondary ticketing market is, from the buyer's point of view, one that is safe and offers an opportunity to purchase tickets beyond the first rush of the general sale. These more established platforms stand in stark contrast to websites that spring up at the time of major events, for example, the

Olympics or concert tours by major artists, where those behind them have no intention of offering the consumer a genuine ticket or a valid secondary ticketing market alternative and simply disappear when tickets are due to be supplied. The latter are dealt with under the category of fraud as discussed in Chapter 2.

Secondary Agents

5.12 A fourth element of the secondary ticketing market is what might be termed “bricks and mortar” ticket resellers that have long been a feature of the London theatre scene and may advertise online. They specialise in “hot” tickets and may well charge a significant premium (as they may have bought at a significant premium). Such professional ticketing agents (or resellers) may also package up ticketing with hospitality by partnering with tour operators, or seek out tickets for otherwise sold out events. Many are represented by ASTA.

Ticket Brokers (“traders”)

5.13 Fifth, there are persons who act as ticket brokers, buying and selling tickets, and utilising the anonymity offered by the internet not to declare themselves as traders. The scale and motive behind their activity is different from individual purchasers selling tickets they can no longer use. They range from so called “bedroom touts”⁶⁸ to sophisticated businesses. The secondary ticketing platforms make it easier for brokers to operate and may reward “power sellers” (those who sell tickets in large volumes with better terms, for example, early payment.⁶⁹ UK consumer law requires that traders provide consumers with information about their identity, as well as certain other information as discussed in Chapter 2. This is because consumers have rights against traders that extend beyond the secondary ticketing provisions of the CRA e.g. under the CCRs and CPRs). The existence of the platform does not change this, but I found very little evidence of this information being supplied. This is in notable contrast with goods platforms such as Amazon and eBay. This makes it

⁶⁸ Individuals who fund their own ticket buying through selling other tickets

⁶⁹ This carries with it the possibility that a broker gains a reputation for fulfilling orders with a secondary site that is later exploited in a “sting” operation in which the broker defrauds buyers. In my view, secondary sites have a duty to report such behaviour to the police.

impossible for a consumer to avoid a reseller they have had a bad experience with and who may be offering tickets on a number of different platforms. In my view, the existence of guarantees on the platforms (see below) does not obviate the obligations on “traders” and the platforms should seek to display the details of volume sellers who it is reasonable to presume are acting as “traders” in the consumer law sense.

- 5.14 I understand that brokers are required to be licensed or registered in a number of States of the USA, including New York, Illinois, Massachusetts, Georgia, and New Jersey. This is a model that the Government may wish to consider for the UK if a licensing regime proves necessary to protect consumers and public trust in secondary ticketing. A licensing body would grant permission to carry on a trade of ticket brokering. Licensing could be carried out by an independent national body, recognised in statute, or by a local licensing authority. If the latter, then I would envisage that reputable ticket brokers (through ASTA) would want to form a legally recognised partnership with a single local authority in relation to regulatory compliance nationwide - this is known as Primary Authority.⁷⁰ The design of any such licensing scheme would need to ensure that competition from rogue operators was minimised through effective enforcement. As with licensing of brokers in New York, there is likely to be a need for exemptions (e.g. individuals who are deemed not to be trading) to ensure that the licensing regime is appropriately targeted.

Street Touts

- 5.15 Sixth, there are persons who are traditionally referred to as “touts”, buying and selling tickets in the streets adjacent to a venue. There are few protections for consumers buying from street touts who operate outside of regulations on street trading. These are outside my purview, since my focus is on online ticketing platforms. However, I have often heard it argued that were online resale to be restrained then the likelihood is that this would drive consumers to street touts, who would become a more significant force in ticket resales again.

⁷⁰ Through Primary Authority, local authority enforcers, such as Trading Standards, provide businesses with robust and reliable regulatory advice, <https://www.gov.uk/government/publications/primary-authority-overview>

Social Networks

- 5.16 Finally, tickets can be traded through classified advertising websites, such as Gumtree (owned by eBay) and Loot, or via social networks, such as Facebook and Twitter. In contrast to the secondary trading marketplaces, peer-to-peer transactions, through Gumtree and Facebook, for example, do not offer any guarantees to ticket buyers.
- 5.17 The consumer survey details a number of other sites through which consumers have conducted transactions. It is slightly surprising that of those respondents that have used secondary ticketing platforms, one quarter said that they purchased their most recent ticket from eBay. In theory, eBay does not permit the listing of entertainment tickets on its UK site, as eBay's StubHub site performs this function. So the survey asked further questions of respondents to seek to clarify eBay responses from those it surveyed. This is covered in the consumer survey report. There is a strong possibility that consumers do not differentiate between the eBay and StubHub branding that appears side-by-side on the StubHub site. Another possibility is that an advertisement on an eBay page draws the purchaser towards another site. Of the other suppliers, 18% of survey respondents cited Seatwave as their source. Gumtree accounted for 14% and GETMEIN! 13%. Around 10% said they purchased their most recent ticket from StubHub and 8% from Viagogo.

Valuing the Market

- 5.18 A key question in relation to secondary ticketing is – what is the market worth in UK terms? It is not an identifiable sub-sector within current industrial classifications - the Standard Industrial Classification (SIC) and the Standard Occupational Classification (SOC). This means that, at present, there is no data-based analysis of the value of the secondary ticketing market. The Europe Economics report for DCMS in 2009 estimated that, very roughly, the UK secondary ticketing market was worth in the

region of £800 million to £1 billion a year.⁷¹ The Europe Economics report is generally taken to be the source for more recent media reporting, valuing the UK secondary ticketing market now at more than £1 billion a year. A PRS for Music Report in 2011 estimated that the additional value to music generated by the secondary ticketing market was £208 million per annum.⁷²

- 5.19 The Europe Economics report estimate is significantly at variance with industry reports I received from operators in the market. Industry placed a substantially lower value on the secondary ticketing market. Industry estimates suggested that, in terms of ticket numbers, the secondary ticketing market was between 3 – 7% of the size of the primary ticketing market, although clearly it is higher for major venues. In value terms the revenue share is somewhat higher but still only about one eighth of the size of the primary ticketing market, according to estimates I have seen. Here, it must be remembered that the size of the primary ticketing market is also not well established statistically and there are many smaller events, with tickets ranging as low as £5, not measured in any meaningful way and not generally attracting any secondary ticketing market interest.
- 5.20 In international terms, it has previously been suggested that, while the primary ticketing markets in the USA and Europe are roughly of equivalent size, the European secondary ticketing market is some 15 - 20% smaller than its American counterpart. Recently, IBISWorld's market research has suggested that revenue from online event ticket sales as a whole is \$4 billion a year in the USA.⁷³ While PwC's Global entertainment and media outlook 2015-2019 suggests that live music ticket sales revenue will generate US\$23.69bn in 2019 compared to US\$20.51bn in 2014.⁷⁴
- 5.21 It is not within the remit of my review to examine statements made as to the economic value of the secondary ticketing market. So until such time as a

⁷¹ Analysis of the Secondary Sales Market for Tickets for Sporting, Cultural and other Events, September 2009, http://www.europe-economics.com/publications/secondary_sales_market.pdf

⁷² Adding up the UK music industry 2011, PRS for Music

⁷³ IBISWorld Industry Report: **Online Event Ticket Sales in the US**, September 2015, <http://www.ibisworld.com/industry/online-event-ticket-sales.html>

⁷⁴ <http://www.pwc.com/gx/en/industries/entertainment-media/outlook.html>

methodology becomes available, I will assume – in terms of putting the issues into context - that the Europe Economics study represents the top-end value of the UK secondary ticketing market at very roughly around £1 billion a year.

Globalisation and Market Trends

5.22 The secondary ticketing market is becoming increasingly global. Viagogo reportedly has almost five million tickets available at any given time on a network of nearly 60 global websites. StubHub is the market leader in the USA with extensive business partnerships in sport and has expanded into the UK and other nations. Ticketmaster operates globally as a primary ticketing business, but is also StubHub's main competitor in the American secondary market, with its Seatwave platform, a leading player in the mainland Europe secondary market. Ticketbis is a Madrid based company that operates in over 30 countries, particularly Europe and Latin America. With the growth of e-commerce, markets for secondary ticketing are also opening up in Asia. For example, eBay has invested in Ticketstreet, a Tokyo-based secondary ticketing online marketplace.

5.23 The internet has facilitated the growth of secondary ticketing, with consumers increasingly comfortable with purchasing tickets online, provided the marketplace holds their money in an escrow account⁷⁵, giving the money to sellers only after the event to ensure that tickets are genuine. It is now relatively easy for a UK seller and a UK buyer to complete a ticket resale transaction for a UK event over a ticketing platform owned by a multinational company with no presence in the UK. As a result, some jurisdictions have been reviewing their regulatory legislation on “touting” or “scalping” to reflect the borderless reality of the internet. While in others, such as Germany, event organisers seek injunctions against online exchanges for breaches of their own ticketing terms and conditions. It follows from this that simply banning the operation of secondary sites in the UK would not solve perceived problems with the secondary ticketing market; any more than the banning of

⁷⁵ This refers to money held by a third-party on behalf of transacting parties

secondary ticketing sales in France means that such sales do not take place; they do.

- 5.24 The most mature market is in the USA where there is increased blurring between primary and secondary ticketing markets, with ticketing inventory being placed directly onto the secondary ticketing sites by event organisers. A prime example is the Ticketmaster plus website which shows in one place what seats are available at what prices, for both unsold tickets and those for resale. Another strong feature of the American market are individuals or professionals (“brokers”) who buy and sell tickets, utilising software packages to post ticketing inventory to multiple resale markets, with duplicate listings being automatically deleted should a ticket sell on one site. Independent price comparison websites exist in the USA which have started to develop in the UK to help consumers identify possible sources of tickets and best prices.
- 5.25 Ticketing is also becoming more varied, with electronic ticketing and identity-based ticketing competing against traditional paper ticketing. New business approaches may also be emerging, such as artists and venues favouring direct-to-consumer business models that harness the power of social media. For example, a Facebook Ticketing App can allow the sale of tickets to fans, via a Facebook fan page.

How do Tickets come to the Secondary Ticketing Market?

- 5.26 The distribution routes for the primary ticketing market has a bearing on how tickets come to any one of the channels described above, that make up the secondary ticketing market. A key issue for the consumer is the number of tickets available through each primary channel, regarding which there is no transparency. It has been suggested to me that for a major music artist, where demand is likely to be strong, perhaps only 20 - 40% of the ticketing inventory will remain at the time of the general public sale and only limited availability towards the front of the arena. This is because a large proportion of tickets will already have been sold in advance of the general sale; for example, via official fan clubs. This is discussed further in Chapter 3, but presales are frequently targeted at fan club members or users of certain credit

cards and technology. I believe there is a lack of information–sharing and transparency with the ticket-buying general public on this point.

- 5.27 If public trust in ticket distribution for concerts is to be maintained, then the misconception that all tickets go on general sale at one time-point needs to be addressed. If ticket distribution channels, including the general sale, are better understood by the consumer, then it will be less surprising to them that, on occasion, tickets appear to sell out quickly even in quite large venues.
- 5.28 Some tickets purchased or received through the primary ticketing market will find their way onto the secondary market. Some will be sold to friends or acquaintances, others by word of mouth or advertising, but the majority of resales are likely to use the internet and the large online secondary ticketing platforms, in particular. There are three categories of sellers that use the online secondary platforms:
- (A) Regular traders that have bought (or have possession of) tickets in order to resell, having never intended to go to the event.
 - (B) Event attendees who have purchased more tickets than they wish to use in order to sell some others (e.g. to help pay for the tickets they do plan to use.
 - (C) Those that planned to use all the tickets they bought, but whose circumstances have changed, meaning they can no longer attend.
- 5.29 Sellers that fall into Category (A) and Category (B) will be looking to achieve a quick turnaround and benefit from the “buzz” surrounding the original primary market sale. The third group, Category (C) sellers are likely to make tickets available later, maybe quite close to the date of the event itself once they have discovered that all their tickets cannot be used. During my review I have not been able to obtain reliable evidence of the relative size of each of these groups, but perceived problems are most closely associated with Category (A) and to a lesser extent Category (B).
- 5.30 There are professional resellers (or brokers), who make a living through buying up tickets early in the process and selling them later in the hope of turning a profit. These “professional” resellers (or touts) are firmly in Category (A) and may buy up tickets in batches (e.g. by using botnets) purely for the purpose of resale at a profit.

This is evident in sales patterns of tickets for events that seemingly sell out in minutes only to appear on the secondary ticketing market. In doing so, professional resellers may block out consumers keen to secure a ticket, who are instead therefore faced with paying a higher price than would have otherwise been the case. Evidence from my review suggests that the highest resale prices are often obtained at the point of general sale and that resale value declines thereafter for all but the most popular events. The degree to which stakeholders considered that brokers were active, or a dominant force in the secondary ticketing market, depended on views on how sophisticated and lucrative broker activity was thought to be. Certain stakeholders considered that 70% and upwards of tickets offered for resale were typically from brokers. Numerically they may be a relatively small number of brokers in comparison to individual “fan” sellers, but as traders they are likely to be purchasing tickets in batches, with a preference for in-demand, high-value tickets. As such they are potentially valuable suppliers to a ticketing marketplace, in the same way that “power sellers” are valuable to the eBay business. Unlike in certain US states, brokerage is not an activity that currently requires a licence in the UK (but see earlier).

5.31 A broker’s access to an event’s ticketing inventory may depend on the contacts the broker has with the promoter, the record label, the artist’s entourage etc., and when additional seating space becomes available once the precise layout of the stage is known. Unwanted ticket “holds” may change hands and also find their way to a broker. A broker may also obtain tickets from the box office (e.g. a team of individuals each buying the maximum allocation), from presales, or from others with authorised access to the ticketing inventory. For sport events they might also purchase season tickets and sell them on a match-by-match basis.

5.32 As well as using knowledge of the industry and relationships, it was considered that some brokers employed bots and botnets⁷⁶ to assist with purchasing higher volumes of tickets. Bots mean that a broker can buy up or reserve ticket inventory instantaneously when it is made available, potentially breaching any restrictions on

⁷⁶ See discussion in Chapter 2

the number of tickets that can be purchased either directly or by using multiple identities. The more sharp the business practice, the less likely it was felt by some contributors to my review that such persons would be declaring themselves as “traders”. Further, there are questions over the extent to which some brokers using botnets might be engaging in other criminal activity, such as consumer fraud. These issues are also discussed in Chapter 2.

5.33 There are also tickets offered for sale by Category (B) sellers who buy more tickets than they ever intend to use. For example, where there is a limit of four tickets per application, an individual might purchase four tickets with the intention of using two tickets for themselves to gain admission to the event and selling the other two tickets on the secondary ticketing market, at above face value, with the profit made offset against the cost of the two tickets they used. A number of stakeholders told us that they considered such activity to be quite prevalent.

5.34 Respondents to the Call for Evidence provided some evidence of this. For example,

“The secondary sites therefore provide an opportunity to purchase tickets for away [rugby international] matches that would otherwise be unavailable. The price of these tickets is normally substantially above the face value of the ticket. As a [rugby] club member I can buy up to four tickets for each [home] match and so I will often purchase my full allocation and sell the tickets for matches I am not going to attend, or any excess tickets. This resale provides me with a profit that I then use to purchase tickets at inflated prices for the away matches where I am unable to buy tickets during their primary sale. As such my activity is fairly cost neutral with the profit I make on sales offsetting the inflated cost of the secondary tickets.”

5.35 The wide variety of primary distribution channels means that tickets can find their way onto the secondary ticketing market in any number of ways. The most often publicised source of tickets for resale is “genuine fans” that are no longer able to attend the event. These Category (C) sellers are encapsulated in the StubHub campaign slogan - “They can’t go so you can”. However, what limited evidence there

is available consistently suggests to me that genuine fans are not the resale platforms' major source of business.

5.36 Aside from these three categories there may be other types of seller also, related in some way to the primary market. During my review, views differed on the likelihood that a promoter, artist-manager-agent, or those in sport would seek to gain a financial return by placing ticketing inventory on the secondary ticketing market via a broker. Some stakeholders told me that they considered that this was unlikely as, it would be in breach of contractual arrangements. Others considered it more likely, given the relatively low likelihood of being “discovered”, a lack of transparency on sale and resale behaviour, and the higher financial return potentially available through listing on secondary ticketing platforms. Some stakeholders argued that the price differentials may be an incentive for ticketing companies, promoters and artists to divert primary ticket allocations directly to secondary ticketing sites, particularly if it is not inhibited by any specific regulation of the primary ticketing market. Channel 4's *Despatches*⁷⁷ programme also highlighted the temptations. However, when speaking to a promoter's body⁷⁸, they assured me that such activity does not occur and it would not be possible without the agreement of the artist or their manager. Despite this, others suggested to me that promoters may seek to dispose of tickets for poorly selling tours at cut prices on secondary ticketing sites and get drawn into passing some premium tickets for “hot” events directly to the secondary ticketing market to maintain the useful arrangement for future poor selling shows. I received evidence from several sources concerning primary parties placing tickets on the secondary ticketing market (see a genuine, but anonymised, settlement example of an arena at Annex J).

5.37 Ultimately, I did not receive any hard evidence that confirms whether or not this is happening. However, the possibility exists that the established commercial secondary ticketing platforms do earn some of their revenue by acting as both official (as in the case of sport) and unofficial resale ticketing agents to others in the live

⁷⁷ *Despatches* 2012

⁷⁸ Concert Promoters Association

entertainment industry, given the imperatives discussed earlier⁷⁹. Such sales would be somewhat clandestine, whether carried out by promoters, managers, venue operators, artists or players themselves. To me, if a promoter or agent wishes to place tickets into the secondary ticketing market at inflated prices, that is their prerogative. It is duplicitous to consumers, particularly if done covertly whilst maintaining a moral stance, but in general in Britain a primary seller is free to determine their price, or price structure, and if they choose to differentiate in price either to manage excess demand or excess inventory then the purchaser is at least assured of a ticket at a price they agree to pay. Section 90 of the CRA requires sellers and secondary ticketing platforms to identify where sellers fall into certain categories, including where they are related to event organisers. However, I received no evidence of this happening. Clearly, these tickets are genuine and any sales revenue made through this channel goes back to one or more of the key industry elements, but nevertheless they need to comply with transparency requirements in consumer law. Activity such as this blurs further the line between primary and secondary ticketing sellers, since tickets from this quarter will not have been previously on sale, and may add to consumer confusion.

- 5.38 Views I heard also differed on whether, or not, people working for, or connected to, the secondary ticketing platforms companies were to be found routinely acting as brokers in their own right, potentially taking advantage of ticket pricing trend information from the platform itself. The established platforms maintained that they did not trade on their own account. However, it is clear from the Dispatches programme in 2012 that historically at least, Viagogo may not have been operating entirely as a marketplace purely for others. Unfortunately, as might be expected, this is one area that I felt the absence of any detailed factual or statistical evidence most keenly. Again the CRA attempts to provide greater transparency in this area by including an obligation for sellers and platforms to reveal the existence of connections like this where they exist. I have not been made aware of any such

⁷⁹ No promoter we spoke to admitted to this practice, but we heard from various other industry sources that it happens and that promoters are economical of the truth in this respect. Anecdotally, some managers or agents engage in this practice, possibly without the artist's knowledge

information being provided where tickets are sold on secondary ticketing platforms by people in the employ of those platforms.

Vertical Integration

5.39 It has also been put to me that the vertical integration in the industry is not in the interests of the consumer. Particular reference is made to Live Nation as a venue owner (Motorpoint Arena in Cardiff, for example), concert promoter, an artist management company, primary ticket operator (Ticketmaster) and a secondary ticketing market operator. In theory, all these activities are separate. Nevertheless, when Ticketmaster as a primary operator holds no tickets, it passes consumers on to one of its secondary ticketing sites. It has also been put to me that hints about forthcoming events may be passed on by insiders to brokers or volume sellers despite the “Chinese walls” within Live Nation, prior to the event going on sale⁸⁰. This would have been something for the CMA (and its predecessors) to consider at the time the relevant merger⁸¹. In 2015, after an investigation the CMA decided to clear the way for Ticketmaster to own Seatwave on the basis that they felt there was sufficient competition in the secondary ticketing market. As experts have considered this previously I do not propose to comment in this report.

Reassurance for Consumers

Technological Solutions to Prevent “Harvesting”

5.40 There are commercially available tools which can eliminate “bot” purchases, by associating people’s purchases with sufficient of their details to ensure that the purchaser is a human - a company called Yoti furnished us with details of their model. These procedures cost money, but if sellers are intent on making sales at (what is likely to be) below market price, and they want to sell only to individuals, they are arguably necessary. To date, outside of “Captcha”, which requires a response to a visual question, I found little evidence of proprietary software being

⁸⁰ There is no suggestion that top management either knows or approves of this practice

⁸¹ <https://www.gov.uk/cma-cases/ticketmaster-europe-holdco-limited-seatwave>

employed in the ticket business, despite what appears from responses to be a significant demand and expectation amongst the ticket buying public. From the viewpoint of a ticket selling agent, there may be limited interest in such tools so long as tickets are sold and paid for and the client is content that there is an audience present at the event. The means by which that audience came by those tickets may be a very secondary consideration.

- 5.41 We are also seeing advances in biometric technology that can validate a person's identity in real time at a venue, by using face recognition software in conjunction with a person's passport or driving licence. For those artists and events that wish to link a ticket to a person's identity, and by so doing counter bots, deter resale activity and overcome counterfeiting, such digital identification technologies could be used to ensure that only the intended purchaser can prove their identity and so gain admission.
- 5.42 I would also like to see greater technological connectivity between venues, primary and secondary ticketing markets and ticket brokers, so that all concerned can assure the consumer that a ticket is genuine, regardless of point of sale or resale. I would like to see such cross-market technological integration become the norm, through the development of standard industry interfaces.

Secondary Ticketing Guarantees

- 5.43 In order to grow and provide reassurance to purchasers, the secondary ticketing market has developed methodology to provide ticket refunds that are more sophisticated than those offered in the primary ticketing market.
- 5.44 All of the major secondary ticketing platforms serving the UK market have adopted the model, pioneered by StubHub, which offers some form of guarantee against: a ticketing transaction not being fulfilled by an anonymous seller; tickets going astray in transit; admission to the venue not being granted; or the event simply being cancelled. By comparison with classified advertising, social media, or street sales, secondary ticketing platforms present themselves as being lower-risk in terms of

ticketing non-fulfilment. StubHub has its “Fan Guarantee”⁸² that is set out in some detail on its website”. Viagogo gives some detail of its Guarantee,⁸³ as does GETMEIN! with its “Fanguard Guarantee”⁸⁴ and Seatwave with “Ticket Integrity”⁸⁵. Other sites are less forthcoming on what buyer protection policies they have in place, particularly those that are primarily advertising sites.

- 5.45 Each guarantee has different terms and conditions, but typically the platform will intervene if a ticket does not arrive with the consumer by the agreed time. They will then endeavour to get the ticket direct or source a comparable replacement ticket. Only if an alternative cannot be provided as they are likely to give the consumer a full refund. The cost to the platform of providing such a guarantee is one of the elements that underpins the platform’s charging of fees to buyers and sellers. In some circumstances, failure to supply a ticket (or supply of an invalid or counterfeit ticket) could constitute fraud and as such trigger the obligation, in section 93 of the CRA, on secondary ticketing sites to report criminal activity to the police and event organiser. Fraudulent activity in respect of tickets can only be effectively addressed if properly reported and I remind secondary ticketing platforms of their obligations under the CRA in this regard.
- 5.46 The evidence I received during my review suggests that, where consumers are aware of a guarantee, they do place great value on it, particularly in terms of reducing the risk of acquiring invalid tickets - even though few have actually resorted to calling on a guarantee. The Consumer survey indicates that between 31 - 41% of those purchasing tickets from the major secondary ticketing platforms were aware of the existence of a guarantee. By comparison, 41% of purchasers of tickets through Gumtree were clear that a guarantee was not provided by Gumtree.
- 5.47 In general, I did not receive detailed evidence from the platforms as to the aggregate costs incurred in sourcing replacement tickets, or providing refunds. However, I

⁸² <http://www.stubhub.co.uk/fan-services/>

⁸³ <http://www.viagogo.co.uk/Help/Buyer/20>

⁸⁴ <http://www.getmein.com/fanguard.html>

⁸⁵ <http://www.seatwave.com/Help>

received the following statement from StubHub which may be indicative of the market:

“Fewer than 4% of ticket sales on StubHub result in the FanProtect Guarantee being invoked. This includes cases where the event was cancelled and where StubHub offered a full refund. Once event cancellations are removed, this figure amounts to an even smaller percentage of all ticket sales on StubHub. In over two thirds of these cases (68%), StubHub was able to source comparable or better tickets. For the rest of these tickets, they offered a full refund.”

5.48 The timing of payment to sellers is also relevant to the success of the secondary ticketing market. In general, ticket sellers will not be paid by the platforms until after the buyer has successfully attended the event. The ticket seller may also be liable for replacement costs if a ticket is not provided, a further disincentive for non-supply of tickets. Where a platform has an ongoing contractual relationship with a ticket broker or “power seller”, perhaps based on previous experience, then the platform can potentially recover costs as a result of the non-delivery of a ticket by the broker, even if they are paid before the event, by exerting a charge on other parts of their inventory. I was not able to ascertain what proportion of tickets (as opposed to the proportion of sellers) came from sellers who had contractual arrangements with the platform that allowed them to be paid before the event, but some in the industry suggest this is a significant proportion. If so, it is a potential vehicle for fraud, even though the platform may itself be protected against financial loss by always being “in credit” in terms of funds due to the broker.

5.49 Where a purchase falls through, a consumer’s clear preference is to receive replacement tickets that are broadly the same, or better value than they had originally purchased. I believe that platforms should be more transparent as to what a “comparable ticket” means, and how and where they draw the line in terms of the time and cost of securing such replacement product under a guarantee. While I received evidence that refunds were very rare⁸⁶, it was also suggested to me that

⁸⁶ See above on guarantees

platforms can be too willing to refund on those events where inventory is very limited and prices are on the rise.

5.50 Refund complications may also occur when an event is cancelled or postponed, as the refunds will normally be paid to the original purchaser, who has since become a reseller. Here the person in possession of the ticket may seek recompense from the reseller. However, the reseller who has parted with the tickets will not always find it so easy in turn to get their money back from the primary provider, particularly where reselling the tickets is identified as a specific breach of the original terms and conditions. Any refund will be limited to the original cost of the ticket which may be a much lower price than the one paid by the subsequent purchaser (and ultimate ticket holder) on the secondary ticketing platform. In both these circumstances, the guarantee may be of assistance in providing for a full refund to the acquirer of the ticket.

5.51 Where a refund does ultimately prove necessary, and the seller was a broker, some parties expressed the view to me that this should result in a refund to the consumer that is punitive to the seller, along the lines of the 200% promoted by the National Association of Ticket Brokers (NATB)⁸⁷ in the USA. This is important from a consumer perspective, as a 100% money back guarantee is poor recompense for a missed event. It could give greater credence to the guarantee, encouraging consumers to take it more fully into account in their purchasing decision-making. It would also more clearly differentiate platforms from other outlets, such as social media, with no consumer protection, as well as helping hold brokers to account if they have deliberately chosen not to supply a ticket in order to sell it elsewhere at a higher price.

5.52 I have heard some calls for secondary ticketing sites to provide refunds for cancelled events or ticket non-delivery over and above the price of tickets to cover travel and

⁸⁷ The “code of ethics” adopted by the NATB in the USA, provides that non-delivery of a guaranteed ticket (unless beyond the reasonable control of the Member) triggers a refund equal to 200% of the contracted price

other related expenses incurred. However, to my mind, there does not appear to be any more compelling case for this in the resale market than there would be with primary ticket sales.

- 5.53 I consider that secondary ticketing platforms should publish on their website the “fine print” of their guarantees and policies so that the consumer knows in what circumstances they may reasonably expect to receive a replacement ticket, or failing that the scale of the refund.

Other Means of Delivering Consumer Reassurance

Self-regulation and Voluntary Action

- 5.54 In this section I look at existing industry self-regulation and the scope for further voluntary activity.

Ticketing Industry Bodies and Codes of Practice

- 5.55 The event ticketing industry has taken voluntary steps to self-regulate, through the creation of industry bodies and codes of practice.
- 5.56 The Society of Ticket Agents and Retailers (STAR) was formed in 1997 and as a primary market body counts agencies, box offices and venues among its members. Its Members include Ticketmaster, See Tickets, AXS, and Ticket Factory, among others. A number of other organisations are associate members of STAR, including the National Arenas Association (NAA), the Society of London Theatre (SOLT) and many individual theatres and concert halls. The Concert Promoters Association (CPA) has also previously worked alongside STAR in discussions with Government. STAR’s website states that it offers general advice and information on ticket buying and provides a dispute resolution service for customers who have an unresolved problem with their purchase from a STAR member.

- 5.57 There are also other stakeholders in the sector who have an interest in developing voluntary measures. For example, ASTA has a code of practice for its membership with a read-across to the Code of Ethics of the National Association of Ticket Brokers in the USA.
- 5.58 Both STAR and ASTA engaged with the then Office of Fair Trading to seek recognition of their individual codes under The Consumer Codes Approval Scheme (CCAS). Neither was successful at the time due to concerns over interpretation of what was fair and reasonable in relation to ticketing and the consumer. In a recent development, members of STAR have voted in favour of developing a Code of Practice for online ticket resale marketplaces. It is therefore working on plans to extend its present code to suitably qualified members in the secondary ticketing market.
- 5.59 There are also other stakeholders in the sector with interests in voluntary measures. The Sport Governing Bodies have participated in discussions about voluntary measures. Secondary ticketing marketplaces, such as eBay, Seatwave (prior to acquisition by Ticketmaster) and Viagogo have also engaged in this debate in public from time-to-time, as has the Music Managers Forum (MMF) on behalf of artists. Codes also exist in other jurisdictions, such as the code of conduct of the Netherlands-based European Union Secondary Ticketing Association (EUSTA), or the Code of Ethics of the Ticket Brokers Association of Australia.
- 5.60 I note that, in 2006, the DCMS sought to bring together representatives of the live entertainment and ticketing industries with the aim of establishing some principles of self-regulation. These summit meetings were ultimately unsuccessful as the parties concerned were unwilling, or unable, to agree on what might constitute voluntary self-regulation that would apply to all in the best interests of the consumer.
- 5.61 Organising into a representative body is still a relatively young concept for much of this sector, where what divides the parties is still more important than what unites them. The CPA was only formed in 1986, the MMF in 1992, STAR in 1997 and ASTA in 2005. I hope that the time has now come for all these parties and the secondary ticketing platform companies to put aside their differences and sit down

once more. They could then discuss all the variables and develop a code of practice that works for all to improve the way the public acquires tickets and gains admittance. By working co-operatively to improve business models, processes and to agree minimum standards in relation to ticket sales terms and conditions this could help consumers better understand the ticketing world.

- 5.62 It would also be beneficial to see collaboration which resulted in a system for live checking across the industry regarding the availability and validity of tickets for the relevant venue to counteract fraud and reduce the scope for counterfeit and duplicate tickets. All participants would need to subscribe to the same technology, along the lines of the airline ticket industry, that prevents seats being double-booked, though considerable challenges present themselves in order to deliver this⁸⁸.
- 5.63 The ultimate objective would be a code that could be accepted into the Consumer Codes Approval Scheme and which the industry body could monitor and hold members to account. This would have benefits in both reducing consumer confusion and generally improving consumer's ticket buying experience.
- 5.64 I strongly encourage further discussion between the various participants in the ticketing market, to provide assurances and clarification to consumers. If a straightforward means of extending assurance that a ticket is genuine is extended to the secondary market backed by voluntary codes and standards, so much the better.

Are Consumers being Well Served by the Secondary Ticketing Market?

- 5.65 Consumers interact with both the primary and secondary ticketing markets. Both provide a service, but tickets for sport and live entertainment can be considered a luxury, albeit emotive purchase, rather than a necessity, and no one is forced to buy them at face value or otherwise. For particularly prestigious events, such as ringside seats at a championship boxing match, the high price charged makes the ticket desirable as a symbol of the buyer's pre-eminent status - a luxury leisure item.

⁸⁸ See also Chapter 8

Attending events is not in the same category as essentials such as food or utilities, but many members of the public are passionate about sport, music, or culture and accordingly spend their disposable income on it.

- 5.66 As noted in Chapter 3, the primary ticketing market works best for those consumers who like to plan and budget ahead, and so know exactly how much they are going to pay. This extends to researching when tickets are going to be made available and ensuring they are in a position to purchase at the appropriate moment.
- 5.67 The secondary ticketing market may be better suited to those who are more time-poor, not willing to put in the effort to do the research, or are unable to apply at the allotted time. Such consumers will not necessarily know in advance how much they will have to pay, but they may be able to pay much closer to the event itself and have more certainty over their availability to attend. The secondary ticketing market can also be a good solution for last minute purchasers or tourist visitors to an area seeking entertainment. There is likely to be a price to be paid for that flexibility, but there will be advantages for consumers particularly if they are not constrained by a particular event.
- 5.68 Where secondary ticketing market prices are above the face value this might be seen as a cost of flexibility, and one that some consumers are presumably willing to pay if they decide to purchase a ticket that way even though some will see this as unfair.
- 5.69 Ultimately, no-one is coercing consumers to seek tickets for these events and they could refuse to participate if they find the process of acquiring a reliable ticket too costly or onerous. But it is not a goal of the sector to create a market that excludes large sectors of the public on price grounds.
- 5.70 For those consumers who find they are no longer able to attend an event, the secondary ticketing platforms provide an opportunity to recoup costs that might not be otherwise available (e.g. in the form of refunds or authorised resale), which is typically denied by the primary ticketing market. During my review, I have heard the secondary ticketing sites argue that they have brought greater safety and certainty to

the resale market, providing safe payment mechanisms, guarantees and moving it off the street. As I mentioned above, most of the big players provide some sort of guarantee and payments can also be protected by the use of credit cards.

- 5.71 Undoubtedly, this is much less risky than buying a ticket for cash from someone in the vicinity of the venue. However, the sites also make it easier to industrialise the ticket resale process which possibly attracts more people to buy tickets for events they have no interest in attending with a view to reselling the tickets at a substantial profit. This reduces the opportunity - for those that like the certainty of a ticket - to acquire one from the primary ticketing market and impacts on what some people refer to as “genuine fans”⁸⁹.
- 5.72 Because consumers’ enthusiasm for certain events is clearly capable of being exploited, they need information on where and when tickets are available. Further, there could be benefits from adopting a different approach to primary sales, especially for music concerts where tickets tend to be released on a certain date from a certain time onwards. Often it seems far too little information is given about the primary source of the tickets, such as where the tickets are available at the intended face value without additional charges or with minimal charges, for example, primary agents used by the promoters, the venues’ own websites and box office over the phone if not in person.

Conclusions

- 5.73 In addition to complying with the information requirements of the CRA, I remind secondary ticketing platforms it is their legal obligation to report criminal activity (particularly fraud) on their sites.
- 5.74 Beyond this and in my view, secondary ticketing platforms should take more responsibility and undertake greater checks in order to identify traders using their sites with respect to whom a consumer would have rights under consumer law.

⁸⁹ This is not a term that I have found helpful in the context of the review.

Presumptively it seems to me that all those with whom the secondary ticketing platforms negotiate payment terms which involve payment before an event should be declared as traders. A further possibility here is for platforms to presume that all those who sell more than, say, one month in advance of the event to be traders. I accept the secondary ticketing sites' view that the transaction is between a buyer and a seller, through the intermediation of the site, but identification of traders as against individual sellers is not uncommon on other platforms or similar sites and this would afford consumers the opportunity to assert the additional protections under consumer law.

5.75 As I mentioned above, I *am not* proposing a ban on the secondary ticketing market. This is because:

- (i) A ban would not lead to the absence of secondary ticketing, but would simply drive it underground/ offshore, with implications for raised levels of fraud;
- (ii) Several primary operators have chosen to link up with secondary agencies suggesting their implicit approval of such activities;
- (iii) A significant proportion (perhaps 30%) of tickets on secondary sites are priced below face value, offering a useful service to consumers and allowing more people to attend the event.

5.76 More positively, secondary ticketing sites allow those ticket-holders whose circumstances have changed to obtain some recompense in the case where they can no longer attend. They also allow consumers who do not wish to purchase many months ahead of an event an additional chance to obtain tickets. These findings are clearly evident from the consumer survey commissioned as part of my review.

Recommendations:

- **Recommendation 3: If within a reasonable time no progress has been made by secondary sites on compliance and identification of traders, then I recommend that the Government considers alternative approaches which might include the necessity for those selling beyond a certain volume of tickets to be licensed.**

Chapter 6. Pricing of Tickets in the Market

Summary:

In this Chapter, I discuss pricing which is a topic related to the objectives and incentives of various parties within the primary and secondary ticketing markets.

Key points:

- I consider that ticketing agents and venue box offices need to simplify and standardise the price information provided to consumers online.
- I suggest that with Government's assistance, the industry forms a project group to examine and review the levying of mandatory and optional charges in relation to ticketing pricing.
- I am not convinced that price capping is an appropriate solution at this time.
- I believe that ticketing agents and venue box offices need to simplify and standardise the price information provided to consumers online.

Ticket Pricing Concerns

- 6.1 Inevitably, pricing as a concern has arisen earlier in this report. Nevertheless, it merits specific attention. Pricing of tickets was the most significant area of comment for respondents to the Call for Evidence, with 76% of respondents expressing concern or even outrage at the pricing levels on the secondary ticketing market (and to a lesser extent, the primary ticketing market). I saw comments focussed on pricing above face value and additional fees and charges levied.
- 6.2 In comparative terms, respondents to the Call for Evidence were less concerned about pricing for major sport events (two thirds of those respondents) than concert

prices (four fifths of those respondents). As discussed in earlier chapters, it is the reseller with no intention of attending the event who aims to profit through buying cheap and selling dear that many respondents objected strongly to.

Fees and Charges

- 6.3 Many of those responding and calling for a statutory restriction on resale activity based on “ticket price” made reference to the face value of a ticket - by which they meant the price printed on the ticket, plus, where applicable, recovery of a small administrative fee element. In so doing, they echoed Sharon Hodgson MP’s 2011 Private Members Bill, the “Sale of Tickets (Sporting and Cultural Events) Bill”⁹⁰ that defined face value as the original price of a ticket including the full cost of the ticket plus any administration of fees incurred in its purchase. As noted below, this is not the definition of face value adopted in the CRA.

Primary Ticketing Market

- 6.4 With the possible exception of tickets bought in person from the box office, the printed face value is invariably not what the consumer ultimately pays for the ticket. Primary ticket sales, whether online or over the telephone, tend to attract service fees or a commission often calculated as a percentage of the face value of the ticket. face value is defined in section 90(5) of the CRA as the amount stated on the ticket as its price – i.e. not including any additional charges. The term face value as defined in the CRA is not, therefore, the full price of a ticket, and the use of the term carries the risk of misleading the consumer into thinking that any ticket offered for resale above face value may equate to profit seeking when, in reality, resellers might be seeking to recoup other costs incurred in the primary sales process. The reality is that even fan-to-fan sites, such as Twickets, allow sellers to re-charge booking fees incurred when purchasing tickets, up to say a maximum of 15% of the face value ticket price.

⁹⁰ <http://www.publications.parliament.uk/pa/cm201011/cmbills/013/11013.i-i.html>

- 6.5 In broad terms, the largest percentage of ticketing revenue goes to the content provider (the act, artist, or sporting body), while primary ticketing agents derive their income from service fees. The typical fee justification is that it is a contribution towards the costs of running a ticketing operation, including computerised systems, customer services and marketing. The picture though is complicated by ticketing agents agreeing to share a percentage of their fees with venues and concert promoters. A ticketing agent will typically agree a contract with a venue that makes it the venue's primary ticketing company and in return it agrees to pay to the venue a portion of the fees.
- 6.6 Typically, the booking fee, or service charge, will be set at around 10 - 15% of face value with the potential for further charges for processing or delivery (electronically or by post) or for use of a credit card. The administrative costs of processing tickets for different events is largely the same, but when service fees are a percentage of face value, the fee charged to the consumer can vary. It is debatable as to whether there is a true relationship between fees charged and administrative cost incurred. In reality, the fees charged are to some extent a mark-up on the face value of the ticket.
- 6.7 The pricing of tickets in the primary ticketing market is also not restricted to referencing the face value. Primary sellers may place a mark-up on face value for premium tickets covering the front rows in the venue (such as through Ticketmaster Platinum), or discounts or concessions on advertised face value prices to encourage attendance, such as for group parties. Fees can also be incorporated into the face value shown on a ticket, such as building "restoration levies" set by London theatres. Similar fees for "buildings" have been adopted by other venues and are known as a "facilities fee". The degree to which such costs form part of face value depends on whether they are framed as a mandatory levy.
- 6.8 The Code of Practice adopted by STAR (Secure Tickets from Authorised Retailers) requires that customers be informed of the face value of the ticket and any booking fee or other charges that are included in the total price payable. This reflects information requirements set out in consumer legislation. It is argued that, with

knowledge of the component parts of the total cost, consumers can make a better informed decision on whether to purchase from a particular vendor. It was suggested to me that lower percentage fees in the UK market (in comparison to the USA) was indicative of considerable competition between primary agents and that such healthy competition was likely to continue into the future, provided that real-time access to the availability of ticketing inventory via the venue's box office system was maintained.

- 6.9 Should an event be cancelled, then the face value of a ticket is invariably refundable to the consumer, on the basis that the venue of the ticket or promoter may have insured against cancellation or the non-appearance of the artist. However, a refund does not normally extend to the booking fee, the argument being that the ticketing agent will have incurred costs and overheads in advance of the event being cancelled and the cancellation is not the fault of the ticketing agent. Whether the fees are refundable to the consumer by another party will depend on the contractual arrangements for the event.
- 6.10 The time may well have come for live entertainment in the UK to consider adopting all-in pricing as a more customer-centred approach, whereby compulsory service fees are bundled into the price shown on the ticket, rather than being separate. Only in this way can there be transparency as to the true cost of a ticket and a proper price comparison opportunity for the consumer.
- 6.11 I consider that ticketing agents and venue box offices need to simplify and standardise the price information provided to consumers online. This will be beneficial for both the live events industry and for consumers. As the consumer requires information on the total price, the industry should examine and review the levying of mandatory and optional charges and whether these should be included in the ticket price, or added to the ticket base price. I suggest that with Government assistance, the industry forms a project group to examine this issue against the backdrop of existing consumer law protections.⁹¹

⁹¹ See also Recommendation 4 in Chapter 3

Secondary Ticketing Market

- 6.12 Most secondary ticketing platforms tend to charge a service fee to both buyers and sellers, with the fee to sellers set at around 15% of face value and that to buyers set at 10% or higher of face value. However, fees can vary depending on the nature of the ticket. Regular sellers of tickets, with transactions above a stipulated threshold, may be offered discounted fees to help ensure that the platform retains their business. As with primary sellers, fees are levied for use of a credit card and/or processing and delivery of tickets. This levying of fees means that if a consumer, faced with an unexpected circumstance, is looking to recover their outlay, by selling their ticket on the secondary market, they will need to add a considerable price mark-up to cover the fees of the primary seller and the fee charged to them by the secondary ticketing facility.
- 6.13 There have been experiments in the secondary ticketing market with "all-in pricing" whereby the consumer knows at the start of their ticket search the final price they are going to pay at checkout, inclusive of all fees. While this increases transparency on the ultimate price to be paid, a ticket advertised at an "all-in" price can, on first glance, be perceived as more expensive than a similar ticket advertised on a competitor's platform at a lower price point because the consumer only becomes aware of the additional fees during the process of completing the transaction (so called "drip-pricing").
- 6.14 While surveys suggest that consumers would welcome ticketing sites being more upfront on the final checkout price for their ticket, this has yet to translate into a strong consumer preference for sites that display all-in pricing over drip-pricing. Unfortunately, consumer pressure on secondary ticketing sites more generally has, to date, not been sufficient to render this an industry norm. All-in-pricing norms have developed in airline ticket pricing, for example, but this was assisted by legislative intervention.

Pricing Misconceptions

- 6.15 There are a couple of misconceptions regarding pricing that need correcting. First, the fact that a ticket is put up for sale at a particular price does not mean it has sold at that price. It is important to make clear the distinction between offers for sale and actual sales. In fact, one of the sites told us that only around 50% of offers for sale on their site complete.
- 6.16 The second is that many tickets are sold at below face value or at a modest premium. One of the little-known facts of the ticketing industry is that many tickets on the secondary ticketing market are traded at or below face value (or face value plus compulsory fees). In the consumer survey, buyers on the secondary ticketing market who paid substantially more than face value (as defined by them) for the tickets they bought. This was substantially outweighed by buyers on the secondary ticketing market who paid less than face value in total. This may indicate that users of secondary ticketing platforms are less inclined to comment on ticket pricing than respondents to the Call for Evidence who, generally speaking, seem not to purchase tickets offered for sale/resale on the secondary ticketing market.
- 6.17 This evidence from the survey on price tallies broadly with evidence I received from some of the companies in the secondary ticketing market and a price comparison site for music, which presents prices for both primary and secondary ticketing markets on its website. It is clear that prices on the secondary ticketing market range widely both above and below the nominal face value chosen. Together, these various pieces of evidence suggest that whilst high prices for some events, as highlighted by press reports at various times, are an issue, the phenomenon is nowhere near as common as those press reports would suggest. Nevertheless, the responses to the Call for Evidence were worth examining to understand the dissatisfaction that has been voiced on pricing, even if people did not tend to comment on pricing below face value.

- 6.18 On sales of tickets at below face value, I was able to triangulate industry estimates with figures coming from the consumer survey. The consumer survey reports that “A third of respondents (32%) paid the face value of the ticket, while more than a fifth (22%) paid less than the face value in total and a similar proportion (21%) paid slightly more than face value. One in nine buyers (11%) paid substantially more than face value in total.” The survey covers purchasers of tickets for a wider range of events than just music and sport. Industry estimates relating to sellers specialising in music suggest that at least 30% of tickets sell for less than face value. It is not always clear whether these estimates relate to the price before or after fees have been added, but nevertheless, there are a substantial proportion of tickets that are modestly priced in relation to primary ticket prices.
- 6.19 This is not to discount instances of tickets being put up for sale for four-figure sums. Those brought to my attention included tickets for Adele concerts and Leicester City’s last home game of the season, but clearly a four-figure price is an extreme outlier in terms of ticket pricing and hence a good deal less likely to sell. The likelihood that a four-figure priced ticket will subsequently be re-priced downwards is not the stuff of which news stories are made. Nor is the fact that the ticket failed to sell. It is offers of tickets at prices well above face value that make the headlines.
- 6.20 A well-established finding in studies on USA secondary ticketing market sites is that secondary ticketing market prices generally reduce over time as the event approaches, whether for sport or music. This is of course opposite to the airline ticket market, but with many sellers and an asset that will be worthless once the date has gone, there are powerful forces making for this decline (which are, incidentally, the more powerful as a result of an active secondary ticketing market). There is always a “buzz” about major events, but another little-known fact is that a large proportion of events, even by well-known performers and including many festivals, do not in the end sell out. As a result, there are tickets available, either from primary or secondary ticketing sites, close to the date. The lesson for the consumer is to hold your nerve and wait until nearer the event. Always try the primary ticketing market first - more tickets may have been released.

- 6.21 It is important here to reconcile this finding with the fact that consumers often find it difficult to access tickets in the typical Friday 9am general on-sale. There are various ticket distribution sources with different allocations beyond the general public sale. Again, the message is clear - become an informed “fan” if you are really keen to see a particular performer.
- 6.22 In summary, while the established commercial secondary ticketing sellers have some problems, both on pricing and less commonly on non-delivery, they are superior in most respects to the various alternative secondary ticketing sellers as a vehicle for consumers who want to purchase tickets nearer to the time of the event itself.

Below Market Pricing and its Consequences

- 6.23 It follows that if tickets are put on sale on the primary ticketing market by artists or their representatives at what are anticipated to be below-market prices, there is likely to be excess demand. Therefore, it is only sensible for them to have in place a ticketing strategy well before tickets go on sale, rather than as an afterthought. This is likely to have several strands. One is to offer first refusal to “fans”. If offered to all, this will be insufficient if “fans” exceed the number of seats available, either because of the extreme popularity of the artist or because touts have registered speculatively as genuinely interested in attending the event. If touts register speculatively for fan based ticket sales, the purpose of these sales is somewhat negated.
- 6.24 Another strategy that can be adopted is ticket balloting. Applicants to a ballot have a probability of obtaining a ticket related directly to the ratio of available seats to the ratio of tickets applied for. This can significantly reduce problems with below-market pricing, because it reduces the likelihood that someone not intending to attend the event (but rather buying tickets to resell) receives a ticket to do so. A ballot while privileging fairness over market efficiency does get the tickets to people who wish to attend, in the main. This is a strategy which artists/ event organisers, venues and primary sellers could consider if they consider that demand will be great enough.

- 6.25 This strategy could be viewed as inefficient, because those who really want to go may be rejected in favour of those with moderate inclinations. However, it does seem to resolve some issues around equity, and seems to be one of the more effective strategies for preventing bulk-buying for the purpose of resale. It is also relatively easy to implement if primary sellers believe the demand for tickets will exceed the number of tickets available.
- 6.26 A further possibility may be to disallow individual applications for more than a small number of tickets. This is relatively ineffective because where there are several ticketing outlets that do not share information about purchasers, or indeed do not track purchasers from their own site over time, individuals can quickly build up substantial portfolios of tickets without necessarily having recourse to computerised methods.
- 6.27 Additionally, through various means, likely touts can be identified and blocked. Such strategies pursued against bulk purchasers who sweep up tickets through computer technologies or armies of buyers are expensive, but it seems to me they are a necessary precaution in order to minimise disappointment amongst those planning to attend if it is known that there will be excess demand.⁹²

Dynamic Pricing

- 6.28 Lately there has been some increased interest in the use of a “dynamic pricing” model. Rather than having a fixed price or categories of price, with dynamic pricing changes in demand drive the price. The aim therefore is to maximise the revenue that can be obtained from each seat.⁹³ To do this, ticket prices need to be adjusted in real-time by complex algorithms according to the quality of the seats and demand for the event. Software developers claim that use of dynamic ticket pricing results in

⁹² To the extent that use of computer technology to sweep up tickets is contrary to the CMA 90 (as discussed in Chapter 2), a possible analogy here is with precautions taken to deter burglars. The fact that burglary is illegal does not prevent it, so householders wisely invest at their own expense in means of deterrence

⁹³ See for example “Dynamic Ticket Pricing – squeezing more juice from half time oranges”

a 30% increase in gate receipts on average for high demand events. This increase is essentially the event organiser capturing revenue that would have been otherwise lost to the secondary ticketing market. This is similar to the model that airlines use to price their tickets. As a result, passengers on the same flight and in the same category of seat will pay a variety of different prices depending upon the market demand at the time they booked. Airline customers seem to have accepted this reality, though there are sometimes frustrations expressed about the day to day price fluctuations that result. The question for sport and music event organisers is: would their fans accept it?

6.29 While airline pricing is about getting from A to B from possibly more than one supplier, entertainment pricing is about the experience and the ‘never to be repeated’ uniqueness of live performance. An airline ticket may be a necessary purchase, but with live entertainment the consumer must want to purchase. It is a different market. With dynamic pricing, any “buzz” around an immediate venue sell-out would suggest an incorrect pricing strategy, particularly in relation to the best seats. The adoption of dynamic pricing would be a fundamental change in how income from live entertainment ticketing is generated in this country and so far it has yet to gain mainstream acceptance.

6.30 However, Ticketmaster Platinum (i.e. the best seats in the house) is an interesting example of a facility that does embrace dynamic pricing. To quote from their website:

“The price you pay has been set using market-based pricing (based on supply and demand). Platinum Tickets were not purchased initially and then posted for resale; they are being sold for the first time through Ticketmaster Platinum on behalf of the artist.”

6.31 Taking this as read, if an artist complains about high prices and at the same time, people acting on their behalf place tickets on this or a similar site, then they are open to accusations of being duplicitous.

Profit Opportunities and Profiteering

- 6.32 If prices are set below market clearing rates, there is an opportunity for others to seek to capture the value added that the primary price sellers have effectively foregone. This can be readily seen in the online secondary ticketing market whereby tickets are swiftly made available at prices well above their face value cost. This “profiteering” is something that exercised about a quarter of the respondents to the Call for Evidence. The term “profiteering” comes with pejorative connotations, suggestive of unethical methods being used to extract “excess” profit and was an issue raised by about half the respondents to the Call for Evidence. However, in a market economy profit is clearly intrinsic to the efficiency of the system, and all the parties to the sale of tickets will be seeking to make a profit.
- 6.33 The concept of resale in order to recoup a loss as a result of an unexpected inability to use the ticket purchased does not appear problematic. The organisers say they are unlikely to take action against such sales. Even organisers otherwise opposed to resale seem happy to accept this and in some cases endorse resale at face value (plus fees) through fan-targeted platforms such as Twickets or Scarlet Mist. Sales via some platforms may be restricted by the hosts to within a certain period of the event actually taking place (normally around 30 days). Such policies combined with voluntary price limits are designed to only attract genuine tickets and “fair” exchange.
- 6.34 The major commercial resale sites tell us that the prices charged by them are set by the vendors but typically, when listing the tickets they will tell the vendor what the average selling price has been and the lowest current price equivalent ticket. This is likely to influence the price set by the seller but, if they want to set a much higher price or a much lower one they can. The site will also remind them of the selling fees and costs, so that these can be factored into their calculations on pricing. As a result prices of similar tickets will vary across the platforms. In general, prices will tend to become lower the closer the day of an event becomes and this is presumably the derivation of the statistic that some platforms have provided suggesting that about half their sales are at or below face value. As mentioned

previously, it is needless to say that these are not the tickets that attract most attention in the media. Opprobrium is generally reserved for tickets for high profile sell out events that are offered at two, three or more times the face value, particularly where the tickets are put up for sale just after or at the same time as the open sale occurs. It is this opprobrium that leads to suggestions that prices on the secondary ticketing market should be capped to tackle the perceived pricing problem.

Price Caps

- 6.35 Respondents to the Call for Evidence who were concerned about high prices made suggestions for a percentage cap on mark-ups, or occasionally profits, with proposals ranging from 10 - 20% of nominal face value. Those who supported a cap considered that it was necessary to avoid the consumer being exploited by those with no interest in music or the artist, other than making an excessive profit. Such respondents considered that a cap would reduce the prevalence of touts, brokers, professional sellers in the market and particularly the incentive to invest in “bot” technology to acquire the most lucrative seats at high demand events.
- 6.36 There have also been suggestions that ticket resale prices should include a percentage resale right levy akin to “droit de suite”, so that the live music industry shares in the proceeds of resold tickets via a collecting society. I am not convinced of the arguments for such a right in relation to ticketing, rather than performance, as artists already benefit from music copyright and royalties.
- 6.37 I am not convinced that a price capping is an appropriate solution at this time and I *am not* therefore, recommending it. It is therefore incumbent on me to explain why I take this view.

Price Capping: Reason 1

- 6.38 My first reason for not capping is that the problem stems in part, in some cases in large part, from the actions of participants in the primary ticketing market and therefore to impose a price cap would be imposing a solution on one group of market players whilst ignoring the role of another group. There needs to be a fundamental recognition, across all sectors of the primary ticketing market, that pricing, distribution and enforcement are, as I say elsewhere in the report, intimately linked and that controlling one of these is insufficient. Some sectors of the primary industry, both in sport and music, recognise this and take steps to respond; others do not. When prices are set deliberately low, and this is widely seen by other market operators, then these other operators will seek to buy up tickets to sell on to other customers. Insiders in the industry may also recognise this and themselves move tickets onto the secondary ticketing market.
- 6.39 As discussed previously, current steps taken by some sectors of the primary ticketing market are not robust enough. Imposing a limit on numbers of tickets sold in one transaction is not proof against such simple strategies as someone making purchases on a number of occasions, or making purchases from a number of primary sellers. It is not imposing a meaningful limit at all. A personalisation of a ticket (for example by printing a name on it) is not a meaningful personalisation, if it is not subject to venue checks.
- 6.40 For a variety of reasons, both in sport and in music, as well as other areas, there are various special groups who receive tickets under circumstances different from the general public, which may include preferential pricing, but always involve preferential access to tickets. These include participants in sporting clubs, fan club members, corporate sponsors of the event, companies that have bought naming rights to a venue which give their customers preferential rights, debenture holders, and so on. Some but not all of these are under a moral obligation not to sell their tickets on to people who are not part of one of these groups. Their morals in this regard are a matter for themselves or the group, and not, I would suggest, for general legislation.

- 6.41 Many primary websites do not impose burdensome restrictions on individuals using their sites. Whilst some impose no checks, others use technologies such as Captcha. Most forms of Captcha are known to be vulnerable to machine learning attacks. The general public appreciates this and complaints about bots were evident from the Call for Evidence. Superior technologies exist and have proven efficacy that require the individual purchasing the ticket to be registered as a known human being (for example verified by means of a set of identity documents provided to the registration body). Such technologies, together with enforced ticket limits, do provide much more secure systems at relatively low cost and, if implemented, would improve matters considerably.
- 6.42 In summary, if the problem is that primary ticketing market tickets appear immediately to transfer to the secondary ticketing market (at higher prices), I would argue that this is just as much a fault of the primary ticketing market as the secondary ticketing market.

Price Capping: Reason 2

- 6.43 My second reason is that price caps applied against disparate sellers are likely to break down or be subject to manipulation by various means. A price cap as imposed by an industry regulator against, for example, National Grid in respect of its electricity transmission activities, or against a water company in respect of its charges, can work reasonably well. There is a clear regulatory authority, a clear body to be regulated, and a clear set of rules to be operated, together with appropriate penalties. It works less well against bodies where only some of the prices are regulated, such as rail franchise operators, because they can adjust the prices of unregulated fares. In the past when many rents were regulated, it worked much less well against landlords, a disparate group, who skimmed on maintenance or resorted to extortion techniques to evict tenants in order to circumvent the restrictions.
- 6.44 The landlord issue is somewhat melodramatic, but it does raise an important point that constitutes my third reason.

Price Capping: Reason 3

6.45 Merely imposing a rule on pricing is clearly insufficient. Individuals need to complain to someone, and actions then need to be taken. A full enforcement mechanism must be devised, it must be decided whether this is a criminal or a civil offence, penalties must be determined and enforcement would need to be funded and prioritised as against other activities carried out by the enforcement agency. This is not costless, and it will inevitably be imperfect. If an individual of ample means wishes to purchase a ticket for an event and can find a way of obtaining it, they are not going to complain if the price is high. Such a purchase may take place outside the UK so authorities may not hear of it. If the venue operator does not police who enters the event, they will not discover it. Unlike New York, for example, ticket brokers in the United Kingdom are not licensed, so action cannot necessarily be taken easily against an individual seller unless the primary site has full details as to their identity and is willing to participate. Moreover, there are significant numbers of sales conducted through sites such as Facebook and Twitter, where sellers' identities may not be revealed, or sellers may not be who they seem.

Price Capping: Reason 4

6.46 Finally, suppose a price limit were imposed at say 10% or 20% of the full face value ticket cost including face value and fees. This is a substantial margin for any business, albeit less than the mark-up on the current secondary ticketing sites. Imposing a mark-up limit in the absence of primary ticketing market controls in effect legitimises through legislation the operator who makes multiple purchases from the primary site in order to themselves to operate a secondary ticketing site charging the full mark-up, plus whatever fees are allowed by the legislation. This would not alleviate the concerns of an event organiser who opposes secondary ticketing sales on moral grounds. It would not have a substantially different effect on the market from the case where a primary operator chooses a particular secondary ticketing partner and imposes restrictions on it directly.

Conclusions

6.47 I *am not* recommending a cap on resale prices at a particular level. My reasons are that:

- (i) The history of price caps in other spheres is not a propitious one, particularly where the set of sellers is not well defined; people find their way around them;
- (ii) There are some associated difficulties in defining what is meant by a (say) 10% mark-up for example, on what precisely is the mark-up imposed,
- (iii) There is an increased likelihood of sellers moving abroad in order to circumvent the cap;
- (iv) Most importantly perhaps, there is a question of who would enforce the cap and what resources they would employ. Merely declaring there to be a cap is not sufficient. Price caps in Britain are most often enforced by dedicated, substantially staffed regulators dealing with a clear set of established companies subject to their regulation. My feeling is that such a body would only be merited in circumstances where very substantial and sustained evidence of (the potential for) market manipulation was present. It would also exonerate the primary ticketing market from complicity in creating the circumstances behind a substantial secondary ticketing market;
- (v) It would be of limited effect since there is a proliferating and rapidly changing set of secondary ticketing sites, most based in other jurisdictions or having multiple aims and purposes including social networking, meaning any legislation would be extremely difficult to police.

Chapter 7. Consumer Interests

Summary:

In this Chapter, I look at how consumers engage with the secondary ticketing market both as buyers and sellers. I also look at whether consumers understand how the market operates, what problems consumers face and what further action is required.

Key points:

- I believe that consumers are experiencing significant confusion regarding various aspects of the ticketing process. Not least are the problems of identifying and understanding differences between primary and secondary ticketing sites, not knowing what are official primary site(s) and ignorance of who the actual seller is; and lack of the information required by the CRA on and about the ticket, leading to the risk of buying an invalid (cancelled or blacklisted) ticket and being unable to do anything about it.
- I consider a particular frustration for concert-going consumers is that of tickets seemingly selling out in minutes on a primary ticketing site, but then tickets simultaneously appearing at well above face value prices on secondary ticketing sites to which they had been automatically linked by the primary site.

Overview

7.1 Ticketing is certainly an area in which consumers are interested and there is a demand to know how ticketing works in the UK, particularly from those who go to music events. The Call for Evidence received over 1,100 responses, two thirds of which came from individual members of the public. Of those, 64% made specific reference to a musical event and further 29% referred to events in general, including musical ones.⁹⁴

⁹⁴ An analysis of responses to the Call for Evidence is provided at Annex C

- 7.2 The feedback I received on the issues showed that “high prices”, particularly in relation to the face value of a ticket was the single biggest thematic concern for consumers. Around half mentioned both “profiteering” and general “unfairness/immorality”, with 31% seeing a need for further regulation. Other issues raised were event pricing strategies (28%), bulk volume purchasing (24%) and fees and charges on tickets (16%). 15% of respondents commented on wider impacts on music, sport and culture, Another 14% specifically reference botnets.

Consumer Engagement in the Secondary Ticketing Market

- 7.3 One of the justifications for the existence of the secondary ticketing market has been that it is necessary for consumers who would otherwise be left with tickets that they cannot use and consequently be left out of pocket. This presumes that consumers are sellers as well as purchasers in the market. I wanted to understand more about what sort of consumers used the secondary ticketing market and how. It was important to try to get data regarding both buyers and sellers in the secondary ticketing market in order to see how it works for consumers as non-professional ticket resellers.
- 7.4 The consumer survey showed that 25% of respondents said that they purchased their most recent ticket from eBay, followed by Seatwave (18%), Gumtree (14%) and GETMEIN! (13%). Around one in ten said they purchased their most recent ticket from StubHub (10%) followed by Viagogo (8%).⁹⁵
- 7.5 In common with the responses to the Call for Evidence, music concert tickets were the most common type of ticket purchased on secondary ticket websites (60%), followed by theatre tickets (39%), comedy (25%) and festivals (21%). One fifth of respondents said that they have purchased football tickets in the previous 12 months (20%), compared to 14% who said that they have purchased a sport event

⁹⁵ An analysis of the consumer survey is provided at Annex E

ticket(s) other than football⁹⁶.

- 7.6 The consumer survey showed that the demographic was 62% of secondary ticket purchasers were female and 48% of purchasers were under 34 years old, which does suggest use by a relatively youthful clientele.

Consumers' Purchasing Experience

- 7.7 One issue that I heard during my review as a source of particular frustration for consumers was that of tickets seemingly selling out in minutes on a primary ticketing site, but then tickets simultaneously appearing at well above face value prices on secondary ticketing sites.
- 7.8 As consumers, we need to appreciate that just as we want to acquire tickets as soon as they come on sale, so do many other people. We use all the technology we can muster (and that of friends and family also) to maximise our chance of being successful when the ticketing window opens and so does everyone else. I received plenty of evidence that some parts of the public are savvy experts, knowledgeable in how to improve their chances of being successful for the most in-demand events - be it at presale, or general sale, buying at venue or through an agent. They subscribe to fans' organisations and the artist's web-site to gain preferential treatment in the form of early purchase. They may also take out specific credit cards, or acquire a specific SIM card, to gain preferential access. They may also know of sponsors (linked to the venue or the artist) or hospitality providers and seek to source tickets through social media contacts with persons who work at such companies. They may also sign up to music sites to be the first 'in the know' about where tickets might be found. The research undertaken for DCMS by Campbell Keegan in 2007⁹⁷ suggested that, for a certain type of consumer, this hunt for

⁹⁶ Some people would have brought tickets in more than one category.

⁹⁷ The Secondary Market for Tickets (Music and Sport) Qualitative Research Report, Campbell Keegan Ltd, 2007, http://webarchive.nationalarchives.gov.uk/20090902232337/http://www.culture.gov.uk/images/research/secondarymkt_tickets_qrr.pdf;

tickets was a competitive and enjoyable activity. This group of consumers may not always be successful in acquiring tickets for high demand events, but it is not for want of trying.

- 7.9 There are also many less knowledgeable, more time-poor, consumers who only become aware of the event just prior to the general sale, so reducing their overall chance of being successful. The consumer survey showed 33% of buyers said that they bought from a secondary ticket website because they decided to buy too late/the official ticket sellers were sold out. But nearly a quarter of buyers (23%) actually thought the reseller website was an official vendor. I have noted previously the problems that lead to confusion for consumers and this is further evidence of such misunderstanding.
- 7.10 This also leads to a second issue of how many tickets remain to be sold at the general sale. As explained in Chapter 3, demand for some sport events is so high, that a general public sale is surplus to requirements. For highly successful music acts, it has been suggested to me that, come the general public sale (typically a Friday morning), some 60% or more of the ticketing inventory may already have been sold. The remaining 40% that does go on general public sale is also much more likely to comprise a higher percentage of lower quality seating, being further from the stage, or field of play. A promoter may also use the “buzz” surrounding a general sale to ensure that they can sell the rear of the arena before releasing (and sometimes pricing) ticket inventory for the mid-sections of the venue.
- 7.11 12% of respondents to the consumer survey indicated that they were regular ticket buyers – those who purchase relatively few tickets (fewer than 4), but regularly (on 5 or more occasions). 15% of respondents were volume ticket buyers – those who have purchased on average 4 or more tickets on each occasion. Finally, 73% of respondents were infrequent ticket buyers, i.e. those purchasing relatively few tickets (fewer than 4) on fewer than 5 occasions. Infrequent buyers make up the majority of buyers, with 73% of respondents categorised into this group.

- 7.12 Interestingly, 30% said their main reason was that the reseller website was cheaper than the official ticket retailer, and the consumer survey evidence on this has already been discussed in Chapter 6. This is not, however, something that draws attention to the sector. There are frequent press stories recounting “rip-offs” (with the very high prices being asked for tickets for high demand events and artists) where tickets are being offered at multiples of the original face value. Purchasers at those prices will be paying a very high premium compared to those lucky enough to get tickets from the primary ticketing market for basically the same experience.
- 7.13 Respondents were asked how easy or difficult it was to purchase their ticket(s) from the secondary ticket website from which they had purchased their most recent ticket. The results suggest that, overall, the experience is a relatively easy one for most. Most purchasers (82%) found the experience very or fairly easy, while 13% found the experience neither easy nor difficult. Only 5% perceived the experience as difficult.
- 7.14 Another issue for consideration is how consumers feel about the experience of using a service. This question was put as part of the consumer survey and 71% of respondents said that they were satisfied with their experience of buying ticket(s) from the reseller website. This group is made up of 26% who said they were very satisfied and 51% who said they were fairly satisfied. Of the remainder, 17% said they were neither satisfied nor dissatisfied and 12% were dissatisfied to some degree.
- 7.15 Finally, respondents were also asked whether they experienced any difficulties or had any problems after buying tickets through any of the websites they have used in the last 12 months. The majority of respondents said that they had never had a problem purchasing a ticket from those websites. The portion of respondents who said that they did experience problems varies from 10% to 25%, depending on the most recently used website. This is somewhat higher than the incidence of complaints or use of guarantees reported by the secondary ticketing sites themselves but the problems may have been of a lower order than might be expected to invoke a guarantee.

Consumers as Sellers

- 7.16 As noted above, part of the justification for secondary ticketing is that it enables consumers to recoup money that would otherwise be lost to them. This was not a significant point raised by respondents to the Call for Evidence. Only between 1 - 2% of respondents mentioned this or considered sales as a matter of free choice or entitlement for them to choose whether or not to sell a ticket they had bought. However, of sellers responding to the consumer survey said they sold tickets either because they could no longer be used (64%) or because they needed the money (20%). It might be expected that users of platforms would be comfortable with the internet. The results of the survey showed that a significantly greater proportion of sellers tend to buy products online “all the time” or “regularly” (86%) compared to the general public as a whole (33%). The vast majority of sellers buy products on the internet all the time or regularly. The vast majority of respondents who were sellers of tickets (84%) said that they access the internet daily, while 12% access the internet several times per week.
- 7.17 It is instructive to learn how sellers came to use a particular service. The consumer survey asked respondents how they found the website they sold their most recent ticket on. Four in ten sellers say that they have previously used the website they sold most recently on previously (40%). Almost three in ten said that the website was recommended to them by a friend or family member (28%) and around two in ten said that they found the website via an internet search (18%). Just one in ten sellers said that they used the website they most recently sold on to buy tickets for personal use on a previous occasion (9%), while a smaller proportion (1%) had used this website before to buy tickets with the express intention of selling the ticket(s) on. Of course, the purpose of the survey was to obtain a cross-section of consumers, not to target volume sellers directly.
- 7.18 One might expect consumers who had changed their minds about attending an event to put tickets up for sale relatively late in the day. Respondents were therefore asked how long before the event that they had put their ticket(s) up for sale. Around two in ten respondents said that they put their tickets up for sale within just a few days of the event (19%). A number of sellers did so within a week or two

of the event occurring (41%), while around one quarter did so within a month (26%). Around one in eight respondents said that they put their ticket(s) up for sale within a few months (12%). These are not then the people who put tickets up for resale as soon as the general sale commences.

Consumers' Selling Experience

- 7.19 In the survey, respondents were asked about their experience registering to be able to sell tickets online. Almost two thirds of respondents said that they were required to give their address details in order to sell their ticket(s) (65%), followed by almost half who said they had to give their banking details (47%), whereas just one quarter said credit card details (27%) and valid ID (26%). Around one in eight respondents (13%) claimed that they were not required to give any of these details during the registration process. Of those respondents who sold tickets both before the legislation changes in May 2015 and after, around one in six said that they had noticed a change in the experience of selling tickets (16%), while six in ten said they had not (60%).
- 7.20 One frequently used measure of satisfaction is to ask whether a consumer would use a service again. When our consumer survey sellers were asked if they would ever sell a ticket again a clear majority said that they would (83%). Just one in twenty (5%) said they would not and around one in ten were unsure (11%).
- 7.21 It was suggested to me that artists could influence consumer behaviour in this area. When respondents were asked if they would sell a ticket again if the artist or sport person/team/organisers were against the resale of tickets to their events, the proportion of sellers who said that they would sell again decreases dramatically to 55%, while the proportion of sellers who said that they would not sell again increases by a factor of five to 25%.

Benefits of Secondary Ticketing Market

- 7.22 Consumers and the economy benefit in various ways from the existence of a well-functioning secondary ticketing market. First, it creates a fairly safe and secure way for consumers who have bought tickets often well in advance of the event to get their money back if they cannot use them (Category (C) sellers – discussed in Chapter 5). This environment is much safer and better protected than the traditional street sales version of touting because it is less reliant on cash and because checks and guarantees provided by the platforms increase the likelihood of a valid ticket being exchanged.
- 7.23 Second, it provides an opportunity to access events for people unable or unwilling to participate in the original primary ticket sale. This may include tourists wanting to attend a local event as well as those more spontaneous in their behaviours. Depending on the popularity of the event they may have to pay a premium over those who bought tickets from the primary source, but this is value judgment for them to make. For some events, late tickets may actually provide a cheaper means of access.
- 7.24 Third, it is a viable profitable service which some people, both as purchasers and sellers, desire. Not everyone wants to join the (virtual) queue to buy tickets when first on sale. Some tickets will be available at below face value as the opportunity to use them nears expiry, giving people who might not otherwise have been able to afford the event to do so.

Drawbacks of Secondary Ticketing Market

- 7.25 The secondary ticketing market also has drawbacks, however. The event organisers cannot control the price on the secondary market, nor to whom the ticket is sold. The face value on the ticket only influences the initial cost and once a ticket enters the secondary ticketing market the seller decides what price they will accept. Whilst some will only be interested in recovering the original cost of the ticket, others aim to maximise their return on the tickets. None of the “profit” reaches the organising body or artist and the practice undermines attempts to maintain wide

accessibility through ticket pricing. To achieve the best price, sellers may advertise the same tickets on a number of different sites, meaning there is a risk they sell more than once and, in consequence, someone will be left without the tickets they think they have bought. This encourages such sellers to provide the bare minimum of information (less than required by the CRA secondary ticketing provisions) so that they can substitute other tickets if necessary.

- 7.26 The resale market also restricts the ability of event organisers to know their customers. They may have a target audience but once a ticket goes for resale the organiser has no idea who they are. This inhibits the ability of the organiser to build customer relationships that may have benefits for both parties and be a key goal for the artist, sport, cultural event or club. If the organiser tries to counteract this, for example, by linking use of the ticket to specific identified individuals, then the venue may find it is rejecting people on the door, which is expensive and difficult to deal with, as well as disappointing and potentially costly for the would-be attendee.
- 7.27 Far from the transparency sought by consumers there appears to be default to obscurity that applies equally to the primary and secondary ticketing markets. It is not commonly explained to the public why ticketing for an event is put through a variety of agents, who the agents are, who are not official agents, when tickets can be purchased and from which sources. Nor do consumers, who feel they are running out of options told about the safer purchase options available. Nor is there much clarity as to the numbers of tickets being made available at any one time, which as we have seen may be a fraction of the total inventory.
- 7.28 One detriment for the consumer comprises the probability that far fewer tickets than an average consumer might expect are actually available at the announced hour from a stated website. As a result many consumers may be wasting their time in trying to access that site at that time because demand far exceeds supply. The buzz around the general sale is designed to create interest and sell tickets. Some then feel they are then bounced psychologically onto the secondary ticketing site and (mostly) offered tickets at higher prices compared to the nominal face value. Under the assumption that all primary sites have sold out, they may be lured into believing that there is a “now or never” purchasing choice and be tempted to pay a

price they would ordinarily consider unreasonable. This suggests there is a need therefore for more consumer education so that, if they go for highly priced tickets, they do it with their eyes open.

- 7.29 All this seems to be more significant as regards to tickets for concerts. Sporting fans tend to have a better understanding of how to obtain tickets and clubs prioritise known fans as members or season ticket holders.
- 7.30 Further, older buyers in particular seem to have problems recognising the difference between primary and secondary ticketing sites (the survey noted 38% of buyers over 55 as compared to 23% of buyers overall thought they were using a primary site). A number of respondents to the Call for Evidence provided anecdotal support for this problem of recognition. Whether a site is a primary or secondary one should be clear to consumers and many will feel it should not be too hard to find a reasonably good ticket at a reasonable price in relation to its intended face value.
- 7.31 As to other issues, 16% of respondents to the Call for Evidence mentioned fees and charges as an issue but this was aimed both at the primary and the secondary ticketing sector. Evidence from the consumer survey indicates that the majority of buyers said that there were no additional charges on top of the price originally advertised to the purchaser (60%), and around one quarter said there were additional charges (26%). In the internet market for goods comparison sites have entered the market that show the item cost and also any additional fees and charges such as postage. There are similar players developing in the ticketing sector also.
- 7.32 But even those that are happy to use the secondary ticketing sites in full knowledge that they are not “official” may be paying much higher fees and charges than are normal in the primary ticketing market. Both buyers and sellers are charged by the major platforms which may make between 25 - 30% of the selling price. The platforms point to the guarantees they provide to the purchasers as justification for these charges and the charges themselves are clearly indicated, so I do not feel the need to comment further on these fees here, save to say that it is surprising that

competition between sites has not driven them down.

Confusion regarding Seller Identity

- 7.33 Responses to the Call for Evidence indicated that some consumers, while clearly passionate about music and a particular artist, lacked a full appreciation of whom they were contracting with when purchasing their ticket online. A ticket is an emotional purchase where the psychological connection to an artist (whose name appears on the ticket) can override what might be described as normal consumer caution around who is selling the product and what is known about the seller, as well as lessons learned from experience – i.e. is the offer too good to be true. Many consumers seem not be applying the same level of “due diligence” to a ticketing purchase as they would to other purchase decisions, even of a similar nature, such as purchases on eBay, and appear to lack an appreciation of the different types of vendor across the primary and secondary ticketing markets combined.
- 7.34 The consumer survey indicates that nearly a quarter of ticket buyers thought the secondary ticketing website was an official vendor of the ticket. This demonstrates some lack of consumer knowledge of the role of intermediaries, such as online ticket marketplaces, that do not generally “own” the tickets that are being transacted on their platform. The complexity of ticketing arrangements for live entertainment mirrors in some ways that of rail ticketing, with the consumer confused about ticket types, what they are buying, and under what terms and conditions.
- 7.35 The Call for Evidence indicated that some respondents only became aware that their ticket had come from a reseller when they received it and saw the face value price on it. As a result, they had negative perceptions of the secondary ticketing market, with views expressed ranging from feelings of foolishness through to accusations of being conned. The pain felt was often exacerbated where the ticket was purchased to mark a special event or anniversary.

- 7.36 In the Australian Senate report “Ticket Scalping in Australia”⁹⁸ it was noted that the “prevalence and ingenuity of online advertising by unauthorised onsellors can confuse the public as to who is the authorised ticket agent. I also received oral evidence that secondary ticketing platforms can invest considerable sums in marketing their services in ways that give their brand prominence over those selling tickets in the primary ticketing market. As part of their marketing strategy, secondary ticketing platforms make significant use of search engine optimisation techniques (“seo”) and Google Adwords⁹⁹ (keyword search advertising) to advertise themselves and seek to capture ticket sales for high-profile events. It has been suggested to me that sport bodies, promoters and some primary ticketing agents lack the resources, or necessary foresight to compete with the secondary ticketing platforms on pay per click advertising or seo to ensure that Google searches correctly identify official vendors for major events. Whether or not this is the case, it seems that paid for advertisements from secondary ticketing sites tend to be placed at the top of the results page, often above the official primary sales sites. If online advertising is a major concern, then I would encourage major event organisers to work together to optimise their ranking of advertisements and discuss the issue, from an internet user perspective, with major search engines, such as Google. I understand that this has happened in some other countries.
- 7.37 Even when a purchaser does realise that they are buying in the secondary ticketing market, they may be uncertain as to who the vendor is. The development of the digital economy and smart phones in particular, has seen a proliferation of companies operating online and looking to route custom through their business. These include Uber in the transportation sector, platform sites such as eBay and AirBnB, businesses that act as an intermediary between seller and buyer, such as in the hotel sector, as well as classified advertising businesses and social media apps.
- 7.38 The major online secondary ticketing platforms in entertainment act as intermediaries, handling the payment and delivery of tickets sold on them directly,

⁹⁸ Economics References Committee, March 2014

⁹⁹ <https://support.google.com/adwords/answer/6349091?hl=en-GB>

without revealing the identity of the reselling vendor to the consumer. Instead the major platforms offer a guarantee to the consumer that they will step in should the unknown vendor fail to deliver on the transaction (providing ticket replacements or money back in the event of a ticket not arriving or proving unusable). This guarantee differentiates the secondary ticketing platforms from classified advertising or social media, where a consumer may have no such recourse at all, unless they can contact the vendor. However, where a ticket proves to be unusable (for possible reasons discussed earlier in this report), it is venue staff who are faced with the customer at the door, not the business intermediary and the customer does not know who has sold them the offending ticket in order to pursue private actions.

Confusion regarding the Interaction between Primary and Secondary Ticketing Sites

- 7.39 Another element causing uncertainty for consumers is the relationships between secondary ticketing platforms and primary ticketing agents. The most well-known example of this is the ownership of two of the four biggest secondary platforms (Seatwave and GETMEIN!) by the largest player in the UK primary market – Ticketmaster. However, there are number of examples of vertical integration and commercial affiliations that are blurring boundaries between primary and secondary ticketing markets and venue operators, the changing nature of which the consumer might be unaware. I cover some of this blurring in Chapter 5.
- 7.40 Ticket release policies such as the use of presales and the use of a multitude of different primary agents were also a potential source of consumer confusion coming out of the Call for Evidence. In music, different venues will have their own deals with ticket agents separate from deals done by the promoter, which means that primary tickets for a tour may be available from multiple outlets some of which will only have tickets for certain tour dates. The implications of how the live music sector operates are discussed in Chapter 3.
- 7.41 Transparency on ticket distribution is therefore important, so that consumers have a greater appreciation of how the ticket inventory is distributed, at what price and on what dates. Where tickets are released in stages (staggered ticketing) consumers may not be party to this knowledge and hence, when faced with the primary sites

being sold out, unable to make a properly informed choice between waiting to see if they can get a ticket in a subsequent tranche, or buying an already released ticket on the secondary ticketing market (at a premium).

Consumer Law Framework

- 7.42 The legislative framework (including, but not limited to, the secondary ticketing provisions in the CRA) is designed to ensure that consumers have the information they need when buying a ticket on the secondary ticketing market. This includes the face value and full cost of the ticket, as well as the location within the venue. It should also be clear whether any restrictions or terms apply to the use of the ticket or whether there is anything that restricts the attendee's view of the event. In addition, the CMA has made it clear in its open letters of March 2015 to secondary ticketing websites and business resellers that multiple tickets should only be included in a single listing if they are located together.¹⁰⁰
- 7.43 The secondary ticketing provisions in the CRA also tries to establish who the purchaser is buying from, particularly if they are a trader or have a relationship with the organisers or secondary ticketing facility. I have found little sign of this information being provided and there has only been limited success in establishing full seat or standing locations (where applicable). This is claimed to be partly because vendors fear that such information may be used by event organisers to cancel tickets that are being offered for resale or prevent tickets being obtained by the seller from the primary market in the future.
- 7.44 Were it not for the complex fragmented nature of tickets distribution policies, the lack of transparency about these, and the primary ticket release (the “onsale”) being announced to take place so far in advance of the event and in an artificially narrow timeslot, ticket sales dynamics could be very different and many current issues eliminated.

¹⁰⁰ <https://www.gov.uk/cma-cases/secondary-ticketing-websites>

- 7.45 The CRA sought to protect ticket buyers from cancellation of a ticket merely on account of the ticket being resold or offered for resale, where there are no related fair terms and conditions. Another risk to the consumer purchasing or selling tickets is if the organiser goes beyond cancelling the ticket and blacklists¹⁰¹ a person merely for reselling or offering to resell a ticket in the absence of relevant and fair terms and conditions. Event organisers may still be able to rely on contractual terms to cancel tickets that have been resold or offered for resale, or to blacklist the ticket sellers, as long as such terms are not unfair. I am aware that some tickets may get cancelled, but if the ticket has prominently displayed clear terms which the consumer had a chance to accept, that will have formed a contractual agreement between the parties, so that cancellation or blacklisting may well be lawful.
- 7.46 Further, the CRA does not preclude an event organiser from seeking to cancel a ticket or blacklist a seller for reasons other than resale (e.g. because they have information or evidence of fraud), although any related contract terms will still be subject to assessment for fairness by the courts. Should cancellation occur for whatever reason, this also carries the consequential risk that purchasers find themselves having bought a cancelled, unusable, ticket.
- 7.47 The greatest risks, and the issues likely to cause the highest detriment to consumers, are where tickets fail to arrive on time (or at all), a fraudulent or counterfeit ticket is received, or one which has been duplicated and is subsequently found to be unusable. In these cases, the issue is not just the potential loss of money associated with the ticket and the visit to the venue, but also deprivation from attending the event itself.
- 7.48 Some parts of the CRA provisions, properly applied, would correctly identify the ticket and enable it to be authenticated and checked with the primary seller, thereby helping to protect against counterfeit or other forms of mis-sold tickets. However, by contrast, the seemingly haphazard application of the rules, especially for music events, is such that the ticketing provisions have scarcely yet impacted.

¹⁰¹ Preventing the person from buying tickets in future primary ticket sales

7.49 To me, although the business models of established secondary sites often rely on high throughput, there is a conceptual distinction between legitimate secondary activity (which may, on occasion, be carried out for primary event sellers) and criminal activity. Undoubtedly, there is criminal activity in the secondary ticketing market. It may be perpetrated through legitimate secondary ticketing sites or through bogus sites, which are not secondary sellers in the true sense. Secondary ticketing sites should ensure, as normal business practice, that they do not abet criminal activity or incentivise employees indirectly to do so. Potentially, they become liable to prosecution if they do not carry out due diligence in this respect. Certainly, they lose respect. Bogus sites essentially launder money or collect monies without any intention of providing tickets. My reading of the Fraud Act is that for an offence to be committed, the event for which a fraudulent ticket has been sold does not need to have taken place. However, such bogus sites are often based in jurisdictions that are difficult for our enforcement authorities to control.

Recommendation:

- **Recommendation 8: I have produced a list of practical tips for consumers on ticket purchasing at Annex I to my report. I recommend that these are taken into account, and publicised, by Citizens' Advice and other appropriate consumer organisations.**

Chapter 8. Future Considerations

- 8.1 In conducting my review, it was evident to me that there was a lack of necessary trust between parties in the primary and secondary ticketing markets that has implications for how the market presently operates, and how it might evolve in the future.
- 8.2 Britain may be an island, but it is not an internet island. The internet is a naturally disruptive force - it has disrupted many industries, often for the better, but it is not a force that is easily tamed and the live entertainment market (both primary and secondary) has to work with the grain on the internet and not bemoan the trespass of others into its domain, such as Facebook and Twitter. Clever people will always find new ways to do things online and the live entertainment secondary ticketing market, as well as the primary market, needs to be alive to innovation and its consequences for the market.
- 8.3 It seems to me that those connected to “ticketing” need to think of themselves more as a single industry, not a set of silos. Getting people to experience the “real thing” rather than being at home online is the challenge for the industry. To meet it, I believe ticketing must at least be as transparent and straightforward as purchasing home entertainment. In the future, I would hope that an industry-wide approval mark for ticketing could reach the level of consumer awareness of the ABTA¹⁰² mark that was so important in the package travel industry. Once such a mark achieves sufficient recognition, market participants who refuse to become part of a scheme would find their market shrinking because consumers (as both buyers and sellers) would gravitate towards online sites that were participants.
- 8.4 In future, perhaps a single overarching industry body could be formed to help bring about these and other developments to benefit the consumer. However, strong rivalry and fragmentation means that no “trade body” can easily bring such a

¹⁰² The Travel Association

system about in the absence of significant consumer pressure to drive the innovation, so it may be easier for an independent body to do so.

- 8.5 Alternatively therefore, one might envisage an online comparison site developing, along the lines of TripAdvisor, which provides a convenient forum for consumers to exchange experiences about ticket sellers, so that consumers may make informed choices where tickets are available through a variety of sources.
- 8.6 The verification or authentication of a ticket as the genuine article, regardless of vendor, is not an unreasonable ask by the consumer who above all else does not want to be a victim of fraud. The industry as a whole (primary and secondary) needs to consider how best this can be achieved through a standard technological interface with the consumer that is not reliant on exclusive sale/resale arrangements that block out competition from others in the market, that reduces the purchasing options for the consumer.
- 8.7 During the course of Parliamentary debates on the passage of the Consumer Rights Bill (now the CRA), it was suggested that one approach to allow for verification would be to require ticket resellers to quote a unique booking reference number in connection with the original ticket purchase. This could then be checked by potential purchasers against the primary sites' databases or with their customer service teams to confirm that the ticket being offered was genuine and the information provided accurate. The number would be generated at the point of sale of the original ticket and would be a barrier to speculative listings. It would need to apply to each individual ticket, even if part of a group purchase.
- 8.8 There are, however, both practical and legal problems with such a system. The multitude of primary agents using different booking reference formulations, particularly in the music sector, would make such a system highly complicated – questions arise regarding who the potential buyer would go to for checking and whether it could be done quickly enough to facilitate internet sales. Infrastructure changes would be needed in both the primary and secondary market. The primary market would be asked to pay for changes to allow customers to authenticate

tickets on the secondary market for which they receive no additional income. Equally, the secondary ticketing industry would need to establish a standard interface to enable the cross checking to happen. There is strong competition between the platforms and no appropriate industry body to help bring such a system about. In such circumstances, it may be easier and possibly more productive for the secondary platforms to simply chase more exclusive authorised resale deals. Further, there is little evidence of there being the trust between the primary and secondary markets that is necessary to enable such verification. That sort of cooperation seems unlikely.

- 8.9 I also understand that there are legal challenges specifically involved in a compulsory approach, arising from the need to comply with EU law. The EU Consumer Rights Directive (which is the basis of the secondary ticketing information requirements in the CRA) prohibits Member States from going further in national law than the Directive requires. I understand from the debates on the Consumer Rights Bill that the Government's analysis was that introducing a requirement to provide a booking reference number would breach the relevant EU law requirements.

Annex A: Conduct of the Review

1. Part 3, Chapter 5 of the CRA requires the Government to arrange for a review of the secondary ticket market. The review was to be a full review of the consumer protection measures in the online secondary ticketing market.
2. BIS and DCMS jointly commissioned an independent review of consumer protection in the online ticket resale market (the secondary market). The review should provide an assessment of the protections available to sellers and to purchasers of tickets for events which identifies problems for consumers and potential ways to address them. This should cover tickets for recreational, sporting and cultural events in the UK. Evidence was collected by various means, including an Open Evidence Call and a targeted consumer survey of ticket purchasers and sellers.

Leading the Review

3. I, Professor Michael Waterson, was jointly appointed by the Secretaries of State for BIS and DCMS to lead the review. Professor Waterson is a professor of economics at the University of Warwick and is an expert in the field of Industrial Economics.
4. In leading the review I had access to expert advisers, including those with relevant expertise on the events industry, ticketing platforms, consumer law, and enforcement.
5. I was supported by a small team of civil servants officials from BIS and DCMS.

Terms of Reference (see Annex B)

6. The Terms of Reference were drawn up in consultation with key stakeholders, such as event organisers, primary ticket sellers, the online resale industry, enforcement authorities and consumers as both sellers and purchasers of tickets and were agreed by Professor Waterson.

Key Findings from Evidence Received

7. Apart from the main bodies involved in the sporting and music markets, including representatives of artists, particular sport, concert promoters, primary ticket sellers, secondary sellers and so on, the review has two further forms of evidence on which to draw.
8. Firstly, the responses to the Call for Evidence. This focused on people and organisations who have particular points of view, rather than a randomly-selected sample of the population.
9. Secondly, a consumer survey. This was commissioned from BMG and involved two random samples from the population, one a set of 600+ buyers, the other a set of 400+ sellers, both involved in the secondary market.

Annex B: Published Call for Evidence



Department
for Business
Innovation & Skills



Department
for Culture
Media & Sport

A call for written evidence was published on gov.uk on 13 October 2015 with a stated closing date for responses of 20 November 2015. The Call for Evidence was particularly interested in receiving evidence from those concerned with live entertainment, the primary and secondary ticket markets, and the enforcement of legislation.

1142 responses were received by the closing date, with a further 84 replies received thereafter into the call for evidence mailbox by 31 December 2015. All responses were read and considered.

Of the 1142 responses, 770 were individualised responses whilst the remainder were identical e-mails which appeared to form part of a campaign.

Review of Consumer Protection Measures relating to Online Secondary Ticketing Platforms

Call for Evidence

Launch date: 13 October 2015

Respond by: 20 November 2015

| | |
|--------------|--|
| To | Event organisers, primary ticket sellers, the online ticket resale industry, consumer groups, local authority enforcement agencies and consumers as both sellers and purchasers of tickets |
| Issued | 13 October 2015 |
| Enquiries to | ticketing@culture.gov.uk |

Provisions in the Consumer Rights Act 2015

During Parliamentary debates of the Consumer Rights Bill in 2014, concerns were expressed about a number of aspects of the resale of tickets for UK events. To address these concerns, the Consumer Rights Act 2015 introduced certain requirements that apply to the sale of tickets via online secondary ticketing platforms.

These ticketing provisions came into force on 27 May 2015 and provide that:

- anyone (business traders or consumer) offering tickets for resale online must provide clear information about face value; seat location and any usage restrictions; and make clear any link with an event organiser or online platform on which the ticket is being resold;
- vendors are protected from having their tickets cancelled by the organisers purely as a result of the resale (unless this result of reselling is clear in the original terms of sale and these terms are not deemed to be unfair);
- in order to combat fraud; secondary ticketing platforms have a new legal obligation to report criminal activity they become aware of in relation to tickets to the police and event organisers.
- Government will conduct a statutory review of the consumer protection measures to be published by 26 May 2016.

These new provisions supplement existing protections in the Consumer Protection from Unfair Trading Regulations 2008 and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

The scope of the Review and Call for Evidence

The Department for Business, Innovation and Skills (BIS) and the Department for Culture, Media and Sport (DCMS) are jointly issuing this call for evidence to inform the Independent “Review of Consumer Protection Measures related to Online Secondary Ticketing Platforms” which is fulfilling the obligations set out in Chapter 5, Section 94 (1) of the Consumer Rights Act 2015. The independent Review is being chaired by Professor Michael Waterson and the Terms of Reference are attached.

To that end the independent Review is seeking evidence from the current UK market and elsewhere of the effectiveness of consumer protection measures in the online ticketing marketplace. The Review will also consider how well the consumer is being protected by existing legislation, including the Consumer Rights Act 2015, by voluntary measures, or by the actions of interested parties such as credit card issuers.

The focus of the Review is on tickets for UK sporting, entertainment and cultural events and particularly larger-scale, high-profile, exhibitions, festivals, concerts and major sporting events. It does not include tickets for other services such as travel.

Tickets for events may initially be offered to consumers by the organiser, either directly or via a ticket agency. This is referred to as the “primary” ticket market. Tickets may then find their way for re-sale to the “secondary” ticket market and are re-sold online or through

other channels via 3rd parties. The review seeks to gather information on the operation of the secondary ticket market and to understand how the interaction with the primary market affects the availability, pricing and fair trading of valid tickets.

Some key issues for consideration by the Review are:

- **The scope for profiteering and/or fraud through the sale of unavailable or invalid tickets** that may not permit entry to the event. Sometimes consumers buy tickets in the mistaken belief they are purchasing on the primary market from the official ticketing agent. Consumers may not become aware of whether they have a valid ticket (or not) until arrival at the event. This can mean event organisers refusing entry for a problem caused by an unrelated third party.
- **Invalid tickets: online and offline comparison.** Consumers who use major resale sites may invoke a guarantee to seek to obtain a genuine ticket or a refund. Whereas, those customers who purchase an invalid ticket on the street outside the venue will be unlikely ever to see the vendor again and will have lost their opportunity to attend the event as well as losing their money.
- **the use of computer programmes ('botnets')** which, while not reducing the overall number of tickets for sale, automatically purchase a volume of tickets in seconds once they enter the market, potentially depriving members of the public from acquiring tickets for their own use directly.
- **the virtue, validity and reasonableness of primary ticket sale conditions that seek** to prevent ticket resale or transfer.

Background: Parliamentary scrutiny and other relevant reports

The All Party Parliamentary Group (APPG) on Ticket Abuse in its 2014 Report made a number of recommendations for Government, event holders and secondary ticket platforms to consider: <https://appgticketabuse.files.wordpress.com/2014/04/appgta-final-report.pdf>

The issue of secondary ticketing was also debated during the passage of the Consumer Rights Bill in 2014/15.

Europe Economics prepared a report for the DCMS in 2009 to develop a better understanding of the structure and scale of the UK ticketing industry, with particular reference to secondary ticketing: http://www.europe-economics.com/publications/secondary_sales_market.pdf

The Culture, Media and Sport Select Committee published a report on ticket touting in 2007/08: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcumeds/202/202.pdf> to which the Government responded in April 2008: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228688/7346.pdf

The then Office for Fair Trading (OFT) undertook a study in 2005 that looked at the services provide to consumers by ticket agents:

<http://webarchive.nationalarchives.gov.uk/20140402142426/http://oft.gov.uk/oftwork/publications/publication-categories/reports/consumer-protection/ticket-agents>

The evidence sought

The Review welcomes any relevant evidence that interested parties wish to provide on the context and operation of the secondary ticket market.

Examples of the kind of information that may be useful include:

- Any unpublished information from observational data or other statistical analysis about the sale and resale of tickets for events.
- Examples and experiences from other (non-UK) regulatory models.
- Information on various distribution mechanisms for tickets and what are their associated costs and benefits.
- Observations on how the market is working for consumers as both buyers and sellers, including the impact the new May 2015 rules are having on a range of events of differing scale.
- Personal experiences of consumer protection measures when buying and selling tickets (whether or not successful).
- How well terms and conditions of sale, their enforcement and redress mechanisms are operating (e.g. replacement/returns/refunds)
- Information on the relationship and dynamics between the primary and secondary markets and on how and when tickets come to be available on the secondary market after being launched on the primary market.

Examples of questions the Review seeks to answer are:

- What has been the impact of the Consumer Rights Act 2015 protections: for individual consumers buying from the primary market (the organiser) or the authorised agent; or for those buying via an online secondary ticketing marketplace, or from an unauthorised secondary ticketing facility?
- What is the range of perceived impacts, both positive and negative, for events and event organisers of the secondary market?
- Has there been any apparent change in the demand for and supply of tickets on the primary and secondary markets?
- Are the new 2015 Act rules known and understood, being applied properly by event organisers and ticket sellers, and perceived to be fair?
- What views do consumers express on the effectiveness of existing/new transparency measures in providing clearly understood choices and terms?
- How can prospective purchasers verify tickets as genuine?
- What evidence is there that the transparency requirements of the new 2015 Act are making a difference?
- What are the prices, costs, charges and commissions associated with tickets on the primary and secondary markets?
- How well is the market minimising illegal activity (e.g. by countering illegal botnets, but also by using other methods such as staggered release of tickets, release directly to the secondary market etc.)?

General Information

The questions quoted above are illustrative of the information requested. If you have additional or alternative relevant information or evidence you wish to share with the review, then please do include it.

Normal practice will be for details of representations received in response to this document to be disclosed, and for respondents to be identified. If you identify any evidence which you or any other person involved do not wish to be disclosed, please contact the Review in advance of submission via the e-mail address below.

How to respond

We would welcome any information and evidence you wish to provide by **20 November 2015**. Please use the email address that we have set up for this purpose:

ticketing@culture.gov.uk

As an alternative, you may submit written evidence by post to:

Ian Jenkins

Call for Evidence co-ordinator

Department for Culture, Media and Sport (DCMS)

100 Parliament Street

LONDON

SW1A 2BQ

If you are aware of evidence that will not become available until after the closure date, then please contact the review via the above e-mail address.

Next steps

All information will be assessed and shared with the review Chair and any experts that the Chair invites to participate in the review. The review will consider the evidence in relation to the secondary ticketing market for event tickets and publish its conclusions by **26 May 2016**.

Complaints

If you have any comments or complaints about this call for evidence process (as opposed to comments on the issues) please send them to: Complaints Department (Consultations), Department for Culture, Media and Sport, 100 Parliament Street, London SW1A 2BQ



Department
for Business
Innovation & Skills



Department
for Culture
Media & Sport

Review of Consumer Protection Measures in the Ticket Resale Market: Terms of Reference

1. The Department for Business, Innovation and Skills (BIS) and the Department for Culture, Media and Sport (DCMS) have jointly commissioned an independent review of consumer protection in the ticket re-sale market ('the secondary market') as required by the Consumer Rights Act 2015. Through the review, the Government is seeking an assessment of the protections available to purchasers of tickets for events, identification of issues for consumers and proposals for how such issues might be addressed. The review covers tickets for recreational, sporting and cultural events in the UK.
2. The review will consider consumer protection measures (including legislation, rules of law, codes of practice, industry standards and guidance) that apply to the resale of tickets and, if necessary, make recommendations on ways to improve the position. In particular it will consider:
 - how and how soon (after being launched on the primary market) tickets come to be available on the secondary market
 - existing voluntary and statutory protections (including those introduced by the Consumer Rights Act 2015) available to:
 - those buying from an individual or trader
 - those buying via a provider approved by relevant event organisers (primary or secondary)
 - those buying via an online secondary ticketing marketplace, or from a secondary ticketing facility that is not approved by relevant event organisers
 - whether existing protections are helping consumers, including consumers' experiences of the new transparency measures of the Consumer Rights Act 2015

- event marketing and ticketing strategies in relation to the best interests of consumers
 - the characteristics and status of those selling on the secondary market
 - how protections are currently enforced and how effective this is proving
 - methods by which verification of ticket authenticity can be achieved for prospective purchasers
 - prices, costs and charges on the primary and secondary markets
 - alternative models for promoting consumer protection in the re-sale market
 - terms and conditions of sale and the availability of returns/refunds
 - alternative distribution mechanisms for tickets (e.g. staggered release, release directly to the secondary market etc.)
 - transparency requirements when event organisers sell their tickets on the secondary market
3. The review will report on or before 26 May 2016 - 12 months after the commencement of the provisions on “secondary ticketing” in the Consumer Rights Act. The review will report to both Departments with recommendations for Government and for the primary and secondary market places. The report will be submitted to Parliament (the libraries of both Houses).
4. The review will be led by Professor Michael Waterson, Professor of Economics at the University of Warwick, who has been appointed jointly by the Secretary of State for Business, Innovation and Skills and the Secretary of State for Culture, Media and Sport. To deliver the review’s objectives, Professor Waterson will oversee a public call for evidence and a survey of online customers. He will also have access to advice from external experts in relevant fields and be able to call on appropriate administrative support from Government.

October 2015

Annex C: Analysis of Responses to Call for Evidence

Breakdown of key respondents

| Live music and arts including: | Sport sector including: | Ticketing including: | Consumer welfare and law enforcement including: |
|---|--|---|---|
| Association of Independent Festivals; Featured Artists Coalition; Live Music Exchange; Music Managers Forum; Society of London Theatre; Royal Opera House | British Horseracing, England & Wales Cricket Board; Football Association; Premier League; Lawn Tennis Association; Rugby Football Union; Sport & Recreation Alliance; Wimbledon Tennis Championships | Association of Secondary Ticketing Agents; eBay (StubHub); Iridium Consultancy; Society of Ticket Agents and Retailers; Stereoboard; Ticketmaster UK Viagogo. | Chartered Trading Standards Institute; Citizens' Advice; City of London Police; Competition and Markets Authority; Which? |

1. Of the 770 responses, the vast majority (687) came from members of the public, who gave their views on ticket resale, sometimes by reference to their experiences of buying, or seeking to buy, tickets. In general, these did not provide detailed evidence on all the themes as set out in the Call for Evidence, but focussed on particular points of view that they were anxious to make. The respondents were not a randomly-selected sample of the population. A summary of the views expressed is shown below under thematic headings:

| Breakdown by ticketing theme | % of individual respondents who referenced a theme |
|---------------------------------------|---|
| (High) prices | 76% |
| Consumer problems (detriment) | 56% |
| Unfairness/immoral behaviour | 52% |
| (Scope for) profiteering | 49% |
| (Need for) regulation | 31% |
| Event ticketing/pricing strategies | 28% |
| Bulk/volume purchasing | 24% |
| Fees and charges levied | 16% |
| Detrimental to music, sport & culture | 15% |
| (Action against) Bots & botnets | 14% |
| Fraud concerns | 10% |
| (Lack of) transparency | 9% |

2. The top concern was high prices and there was significant support for the concept of a price cap, as had been recommended by the All-Party Parliamentary Report on Ticket Abuse¹⁰³.
3. Views from respondents ranged from capping resale prices at face value, to capping at a 20% mark-up.
4. Detriment to consumers was the second most commonly expressed issue; this is unsurprising since the secondary market's role is to capture part of the difference between primary market ticket values and consumer willingness to pay. A high percentage of respondents considered that ticketing raised moral issues, particularly in relation to music. Related themes included concerns about profiteering and a desire for more regulation.

¹⁰³ <https://appgticketabuse.files.wordpress.com/2014/04/appgta-final-report.pdf>

5. The next set of concerns, although less commonly expressed, concerned broader questions. Nearly 3 in 10 individuals commented on event sales and pricing strategy and there was also considerable concern about bulk purchasing, bots, and on fees and charges in addition to the price ordinarily shown on the face of the ticket. These themes related as much to the primary market as the secondary, and as such they indicated some useful pointers for that market. Consumers were concerned by pricing strategies adopted in primary sales, by the actions, or assumed actions, of botnets and by add-on fees (that are also a feature of the secondary market). Fraud in the market, and transparency on what goes on in the market, were also key themes for many respondents.
6. Responses could also be analysed by whether the respondent was expressing views on a specific sector:

| Breakdown by ticketed sector | % of individual respondents who referenced a specific sector |
|-------------------------------------|---|
| Live music ¹⁰⁴ | 64 |
| Sport | 4 |
| Arts | 3 |
| Not specific to one sector | 29 |

7. Of particular note here is the higher percentage of respondents with views in relation to live music. This greater concern relating to music is in line with other evidence considered by the Review, that point to consumers having greater concerns about ticketing and ticket resale in music than in sport.
8. In line with the Terms of Reference of my Review, the responses will be published in due course, subject to any data protection or confidentiality principles that may apply.

¹⁰⁴ Popular music

Annex D: Circulation List for Call for Evidence

Academy Music Group
Advertising Standards Authority
All England Lawn Tennis Club
Association of Leading Visitor Attractions
AEG Worldwide
Agents Association
Andrew Bingham MP
Arts & Business Scotland
Arts Council England
Arts Council of Northern Ireland
Arts Council of Wales
Association of Chief Trading Standards Officers
Association of Festival Organisers
Association of Independent Festivals
Association of Independent Music
Association of Secondary Ticket Agents
Association of Show and Agricultural Organisations
Baroness Grey Thompson
Baroness Hayter
Baroness Heyhoe Flint
Birmingham Hippodrome
British Association of Concert Halls
Brighton Centre
British Arts Festival Association
British Boxing Board of Control
British Cycling
British Phonographic Industry
Business in Sport and Leisure
Cardiff International Arena (Motorpoint Arena)
Chartered Trading Standards Institute
Cinema Exhibitors Association
Citizens Advice
City of London Police
Competition and Markets Authority

CBI
Concert Promoters Association
Creative Scotland
eBay UK Ltd
David Morris MP
Direct Selling Association
England and Wales Cricket Board
England Rugby Union
Equity
European Arenas Association
European Commission
European Secondary Ticketing Association
Event Industry News
Fan Freedom
Federation of Small Businesses
Festival Republic
Festivals Edinburgh
Football Association
Football Supporters Federation
Greater London Assembly
Historic Houses Association
Historic Royal Palaces
Incorporated Society of Musicians
International Live Music Conference
Lawn Tennis Association
Live Nation
Live UK
Liverpool Echo Arena
Local Government Association
Lord Addington
Lord Borwick
Lord Clement-Jones
Lord Moynihan
Lord Stoneham
Lord Younger
Manchester Arena
Mark Garnier MP
Mark Pritchard MP
Mastercard
Millennium Stadium plc

Motor Sports Association
Musicians Union
National Campaign for the Arts
National Operatic and Dramatic Association
National Police Chiefs' Council
National Theatre
National Trading Standards Board
NEC Group
Nick Smith MP
Nigel Adams MP
NOISE Festival
Paypal
Penny Mordaunt MP
Premier League
Premiership Rugby
Racecourse Association
Ricoh Arena
Royal Albert Hall
Royal Horticultural Society
Royal Opera House
Royal Parks
Royal Shakespeare Company
Rugby Football League
Rugby Football Union
Sadler's Wells
Sage Gateshead
Seatwave
See Tickets
Sharon Hodgson MP
Society of London Theatre
Sound Diplomacy
Southbank Centre
Sport and Recreation Alliance
Sport England
Sport Northern Ireland
Sport Scotland
Sport Wales
Sports Rights Group
STAR (Society of Ticket Agents and Retailers)
Stephen McPartland MP

Stubhub
Supporters Direct
The Federation of Scottish Theatre
Ticketmaster UK
Trading Standards Institute
Trading Standards Scotland
UK Cards Association
UK Music
UK Sport
UK Theatre Association
Viagogo
Visa
Visit Britain
Welsh Government
Wembley Arena
Which?

Annex E: Analysis of the Consumer Survey

1. The second response from members of the public came from a survey commissioned from BMG which conducted an Online Secondary Facility User Survey. The aim was to capture views across a broad range of users of secondary ticketing facilities, both buyers and sellers, in particular to obtain a balanced view across the user public generally, to broaden the evidence base. It involved two random samples from the population, one a set of 600+ buyers, the other a set of 400+ sellers, both involved in the secondary market. These helped in triangulating responses from parties keen to represent their own point of view. Findings from the report produced are summarised here and raised in the report where relevant. Of course, capturing a random selection of sellers makes it only a matter of chance as to whether any volume sellers are present in the sample, but the aim was not to focus on these.
2. One of the main discoveries from these samples is that the secondary market is much more extensive (and also more problematic) in music. The preponderance of engagement with the secondary market being in relation to music was echoed in the consumer survey, where by far the most common purchase, and sale, on a secondary site related to music (of the respondents, 60% bought concerts, 21% festivals). Football came in fourth place, at 20% of buyers, behind theatre (39%) and comedy (25%) with other sport representing only 14% of buyers. The typical purchaser is also perhaps different from the stereotype. Females were over-represented compared to the general population, the most common social grouping was C2DE and, unsurprisingly, they were younger than the general populace on average. They were well versed with the internet, but not particularly with ticket buying. Most did not experience problems with their transaction, in line with what the secondary sites maintain, and many purchased at a price below face value. In sharp contrast to the Call for Evidence, they did not on the whole complain about pricing. Those that had experienced problems commonly found these were solved by the secondary site. One reason for sale, not highlighted anywhere else, is a need to recoup money because of a shortage of funds.

3. Sellers, like buyers, were also much more likely to sell concert tickets than other types, although a higher proportion engaged in sales than engaged in purchases in sport tickets. The profile of sellers was similar to that of buyers.
4. In summary, provided it is always read together with the other evidence, in particular the Call for Evidence, this report provides powerful evidence, particularly where they agree, and does enable some weighing of the evidence from other quarters.

Annex F: List of Organisations met during the review

Table A:

| Organisation |
|---|
| eBay/StubHub |
| City of London Police |
| Gateway Ticketing Systems |
| Ticketmaster UK |
| Citizens Advice |
| Football Supporters Federation |
| Victoria & Albert Museum |
| Competition and Markets Authority |
| Society of Ticket Agents and Retailers (STAR) |
| Which? |
| Trading Standards e-Crime Unit |
| Kerman & Co |
| Government Legal Service |
| Rugby Football Union |
| Iridium Consultancy |
| Chartered Trading Standards Institute |
| Live Nation Entertainment/Ticketmaster |
| HMRC |
| Concert Promoters Association |
| England and Wales Cricket Board |
| Music Managers Forum |
| Home Office |
| LB of Greenwich Trading Standards |
| Bostock Marketing Group (BMG) |
| Europe Economics |
| Viagogo |
| Sports Ink Associates |
| Mumford & Sons |
| Yoti |
| Glastonbury Festivals |
| Scarlet Mist |
| Twickets |
| UK Cards Association |

| Organisation |
|--|
| National Arenas Association |
| Stereoboard |
| Association of Secondary Ticketing Agents (ASTA) |
| Parliamentarians |
| AEG (The O2) |
| British Racing |
| Songkick |
| International Talent Booking Inc |

Annex G: New York Attorney General's Report

I have reproduced below the text of the Executive Summary of the Report from the Office of New York State Attorney General ("NYAG") - Eric T. Schneiderman that was published while my Review was in progress.

The New York State Attorney General's Report is entitled: "Obstructed View: What's Blocking New Yorkers from Getting Tickets"

EXECUTIVE SUMMARY

The New York Attorney General ("NYAG") regularly receives complaints from New Yorkers frustrated by their inability to purchase tickets to concerts and other events that appear to sell out within moments of the tickets' release. These consumers wonder how the same tickets can then appear moments later on StubHub or another ticket resale site, available for resale at substantial markups. In response to these complaints, NYAG has been investigating the entire industry and the process by which event tickets are distributed – from the moment a venue is booked through the sale of tickets to the public. This Report outlines the findings of our investigation.

More than 15 years ago, NYAG issued a landmark report on what it called "New York's largely underground and unexamined ticket distribution system." The report announced that it was a system that provides "access to quality seating on the basis of bribes and corruption at the expense of fans."

Since that report was written broad changes in the technology of ticketing and an overhaul of New York's ticketing laws have completely transformed the landscape, in ways both good and bad. Following the repeal of New York's "anti-scalping laws" in 2007, the once underground ticket resale economy moved partially above ground. This change has produced some benefits: online marketplaces have replaced waiting in long lines, the growth of ticket resale platforms has sometimes made it easier to sell unwanted tickets, and the last minute-minded can attend shows without interacting with potentially dishonest street scalpers.

Yet many of the problems described in 1999 have persisted and, in some cases, have grown worse. Whereas in many areas of the economy the arrival of the Internet and online sales has yielded lower prices and greater transparency, event ticketing is the great exception. The complaints NYAG receives from consumers concerning ticketing commonly cite "price gouging," "scalping," "outrageous fees" and "immediate sell-outs." As one citizen wrote, in a typical complaint: "The average fan has no chance to buy tickets at face value this is a disgrace." Many performers voice similar frustrations (footnote 1).

The problem is not simply that demand for prime seats exceeds supply, especially for the most in-demand events. Ticketing, to put it bluntly, is a fixed game. Consider, for example, that on December 8, 2014, when tickets first went on sale for a tour by the rock band U2, a single broker purchased 1,012 tickets to one show at Madison Square Garden in a single

minute, despite the ticket vendor's claim of a "4 ticket limit." By the end of that day, the same broker and one other had together amassed more than 15,000 tickets to U2's shows across North America.

Consider that brokers sometimes resell tickets at margins that are over 1,000% of face value. Consider further that added fees on tickets regularly reach over 21% of the face price of tickets and, in some extreme cases, are actually more than the price of the ticket. Even those who intend their events to be free, like Pope Francis, find their good intent defeated by those who resell tickets for hundreds or even thousands of dollars.

Findings

A. The General Public Loses Out on Tickets to Insiders and Brokers.

New Yorkers keep asking the same question: why is it so hard to buy a ticket at face value?

1. Holds & Pre-Sales Reduce the Number of Tickets Reserved for the General Public.

Our investigation found that the majority of tickets for the most popular concerts are not reserved for the general public at least in the first instance. Rather, before a member of the public can buy a single ticket for a major entertainment event, over half of the available tickets are either put on "hold" and reserved for a variety of industry insiders including the venues, artists or promoters, or are reserved for "pre-sale" events and made available to non-public groups, such as those who carry particular credit cards.

2. Brokers Use Insider Knowledge and Often Illegal Ticket Bots to Edge Out Fans.

When tickets are released, brokers buy up as many desirable tickets as possible and resell them at a markup, often earning individual brokerages millions of dollars per year. To ensure they get the tickets in volume, many brokers illegally rely on special software – known as Ticket bots – to purchase tickets at high speeds. As the New York Times reported, Ticketmaster has estimated that "60 percent of the most desirable tickets for some shows" that are put up for sale are purchased by Bots (footnote 2). Our research confirms that at least tens of thousands of tickets per year are being acquired using this illegal software.

Brokers then mark up the price of those tickets – by an estimated 49% on average, but sometimes by more than 1,000% – yielding easy profits. In at least one circumstance, a ticket was resold at 7,000% of face value. Finally, some brokers sell "speculative tickets," meaning they sell tickets that they do not have but expect to be able to purchase after locking in a buyer. Speculative tickets are a risk for consumers and also drive up prices even before tickets are released.

NYAG's investigation identified those brokers re-selling the most tickets for New York events. Nearly all were unlicensed, and several employed illegal Ticket Bots to buy tickets. A number of specific investigations and enforcement actions are in process.

B. High Fees for Unclear Purposes Raise Concerns.

Another common complaint concerns the unclear and unreasonable “service fees” added to the face value of tickets, which are generally set by venue operators and ticket vendors. New York law prohibits these parties from adding fees to the prices of tickets unless they are connected to the provision of a “special service” and are “reasonable.” Our examination of ticket fees set by 150 venues in New York raises concerns, revealing that unclear “convenience charges,” “service fees,” and “processing fees” sometimes reach outlandish levels, either as a percentage of the ticket’s face value or in absolute dollar terms. On average, New York venues and their ticketing vendors charge fees averaging 21% of face values, which exceeds what other online sellers charge. Moreover, we found fees as high as \$42 attached to a ticket to see Professional Bull Riding at Madison Square Garden and \$28 to see Janet Jackson at Jones Beach Theatre.

C. Restraints of Trade Exist.

NYAG is concerned by the growing imposition of resale price floors (i.e. “no sales below list price”), along with efforts to mandate that tickets be sold on a single “walled garden” market, as opposed to consumers having the option of buying tickets from different resale platforms. We are also interested in the degree to which excessive service charges may constitute evidence of abuse of monopoly power, especially as they relate to the resale of sports tickets.

Recommendations

In 1999, NYAG found that, despite long-standing regulation, the law “has not succeeded in eliminating the abuse it was intended to address.” That remains true today, and New York remains in need of greater protections for the buying public. We therefore offer several recommendations:

A. Ticket Resale Platforms Must Ensure Brokers Comply With the Law.

Ticket resale platforms are in the best position to ensure that their broker customers follow the law, and they must take meaningful steps to do so. Specifically, these platforms should require that brokers provide their New York license numbers as a condition of using the resale platform, and disclose to potential customers the face value of tickets they are offering for sale, as already required by New York law.

B. Industry Players Must Increase Transparency Regarding

Ticket Allocations and Limits.

The industry must provide greater transparency into the allocation of tickets, to increase accountability and enable the public to make informed choices. Promoters of events, who know the number of seats being held, should provide that information to ticket vendors, such as Ticketmaster, to make available to the public. In addition, wherever ticket vendors claim that ticket limits are enforced, they should enforce those limits as a matter of course on a per-person basis. If such limits are not actually being enforced, ticket vendors must make that clear.

C. Ticket Vendors Must Address the Bot Epidemic.

Bot use is a major reason why New Yorkers cannot get tickets at face value. While the industry works on long-term technological solutions to this problem, steps can be taken to reduce Bot use in the near-term. NYAG has contacted Ticketmaster and another major ticket vendor, AXS, to discuss concrete reforms, such as preemptive enforcement of ticket limits, analyzing purchase data to identify ongoing Bot operations for prosecution, and investigating resellers of large volumes of tickets to popular shows, among others.

D. The Legislature Should Act.

While there is no reason the industry should wait for legislative action to implement the reforms outlined above, the Legislature should act to ensure that reform is meaningful and lasting. Specifically:

i. Mandate the industry reforms outlined above.

ii. End the ban on non-transferrable paperless tickets.

A solution that most industry participants agree is effective at reducing broker activity is the use of non-transferrable “paperless tickets.” Unlike paper tickets and electronic tickets that are freely transferrable from the buyer to another person, non-transferrable paperless tickets require an event attendee to present the credit card that was used to purchase the

ticket. As a result, the initial purchaser typically must be present to use the ticket. State law creates a de facto ban on these paperless tickets, but this rule makes New York an outlier – ours is the only state that bans the practice – and this ban should be repealed.

iii. Impose criminal penalties for Bot use.

Given that ticket resellers are making considered business decisions when they deploy Bots to acquire massive amounts of tickets near-instantaneously, the prospect of criminal prosecution may well have a deterrent effect on this conduct.

iv. Cap permissible resale markups.

Until 2007, New York capped the markup resellers could charge, and the State removed that cap in hopes of benefitting consumers. Unfortunately, competition-driven savings intended to benefit fans have instead been converted to profits for a handful of savvy middlemen using multiple employees or computers, or illegal Bots. New York should reinstitute a reasonable limit on resale

Footnotes

1. See, e.g., Mark Savage, "Sir Elton John: Secondary ticket prices "disgraceful", "BBC News (Dec. 16, 2015), available at <http://www.bbc.com/news/entertainment-arts-35091230>; Patrick Doyle, "Eric Church on Scalpers, Bro-Country and Blake Shelton Scandal," Rolling Stone (June 11, 2014), available at <http://www.rollingstone.com/music/news/eric-church-on-scalpers-bro-country-and-blake-shelton-scandal-20140611>.
2. Ben Sisario, "Concert Industry Struggles With bots That Siphon Off Tickets," N.Y. Times (May 26, 2013), available at <http://www.nytimes.com/2013/05/27/business/media/bots-that-siphon-off-tickets-frustrate-concert-promoters.html>

Annex H: Some Simple Economics of Ticket Sales

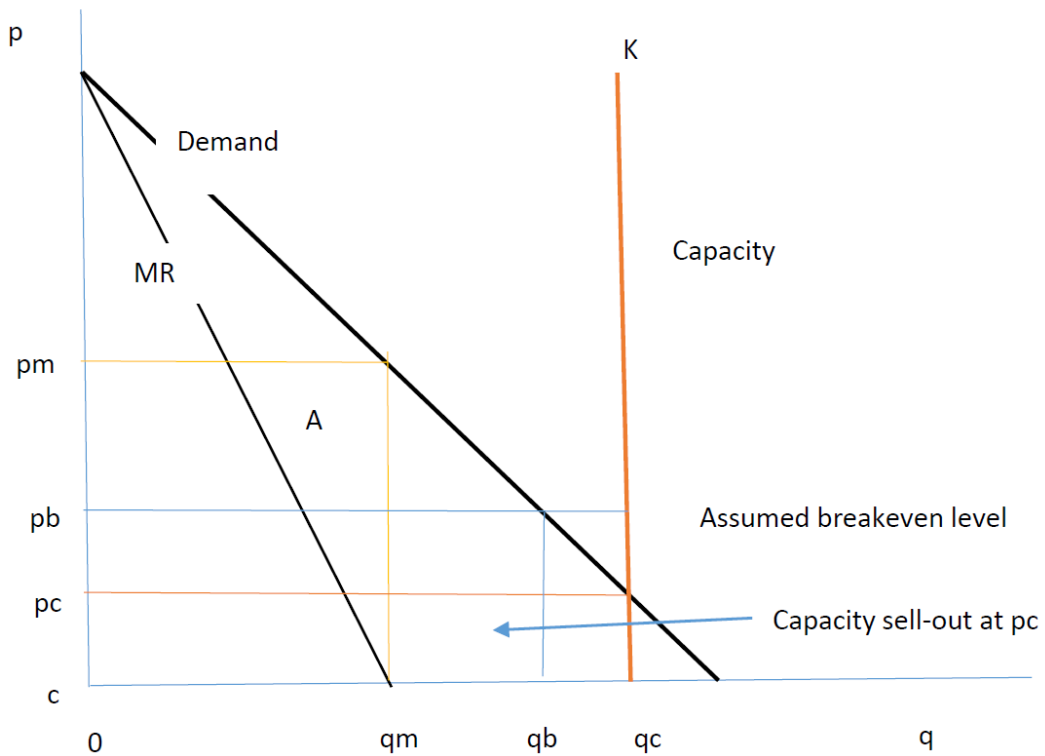
1. For simplicity, let us take the example of a unique event. People are arrayed along the demand curve, with the people who are keenest to go to the event at the highest point, those who are moderately keen lower down, etc. The situation is pictured in the Diagram 1 below, where p represents price and q quantity, with the demand curve, as usual, representing individuals' maximum willingness to pay.
2. Also for simplicity, the venue has a fixed capacity K . The per-customer cost (the marginal cost) of supplying the good is small and is set, again for simplicity, at zero. However, there are substantial costs, F , involved, namely the fixed costs of hiring the venue, paying the artist their guaranteed sum, etc. Hence it is clear that if a single price is set, it cannot be at the marginal cost.
3. A monopolist would set marginal revenue equal to zero in this circumstance, because maximising profit implies maximising revenue given our assumptions. As the diagram is drawn, this would imply that the venue would remain partly empty; only coincidentally would it be fully occupied. This price is labelled p_m and the corresponding quantity q_m . Notice that the monopolist deliberately sets price such that the venue is not full, as the diagram is drawn, because this is more profitable than selling out. The thoughts underlying this may be the origin of the view that in order to ensure as many people as possible attend the event, a price below the "market price" should be set (if we interpret the market price as the price a monopolist would set).
4. An alternative but essentially equivalent interpretation is that q measures the inverse of the quality of the seat, so that the highest willingness to pay are for the highest quality seats, and so on. In this case, the poor quality seats are those that are left unsold.
5. There is nothing that ensures that an alternative, setting price at the point where demand cuts capacity, p_c , covers the costs of the event (that is, that the rectangle with sides (p_c, c) and $(0, q_c)$ equals or exceeds F . Since revenue rises up to the point where the price is at p_m , breaking even may require price to be higher than p_c , say at

pb. (Here we assume that the promoter wishes to break even on ticket sales; promoters' earnings suggest this is approximately true, because there is significant competition between promoters to obtain acts to tour.) This provides more revenue than setting price at pc, despite the fact that the venue is not full.

6. Notice however that there are people willing to pay money for the empty seats who are unable to attend because they are unwilling to pay as much as pb. Potentially, there are means of offering them seats at a lower price than pb, at or above pc, if the market is segmented in some way. In the quality interpretation, this could be thought of as selling them the poorer quality seats.
7. An obvious way to achieve this is to sell different quality seats at different prices. The top quality seats go for a high price, and so on down the quality spectrum, which essentially subsidises a price lower than pb for the poorest quality seats, whilst still achieving breakeven.
8. This is essentially the Ramsey-optimality problem: To set prices across a group of markets so as to maximise consumer welfare subject to achieving a profit target (which we might think of here as earning revenue sufficient to cover the fixed costs of putting on the event). Here we are making the assumption that the concert venue is sold to a range of consumers, who constitute several separate groups. Some are desperate to see the artist at almost any price, others are quite keen to attend, subject to other people going (for example, a couple might contain one fan and another person who is willing to go along), some are interested but may or may not attend, and price will constitute an important criterion in determining whether they go.
9. Thus, in the economist's jargon, there is a range of elasticities of demand. To separate these groups, that is to reduce possible arbitrage between the groups, they can be offered different packages, for example a "meet and greet" package for the keenest, a two-for-one for some people, a cheap seat in a relatively poor location for others. Premium seats can be priced more highly than poorer seats. Or (as has been instituted in some cases), price differentials can be created between groups based on some pre-existing requirement. Notice however that this strategy will not work in generating more revenue if the pre-existing requirement differentially attracts individuals who have relatively inelastic (with respect to price) demands. It will work if it attracts individuals

who are very price sensitive, at the expense of those less so, for example relatively poor fans.

Diagram 1: Matching Demand with Capacity for an Event



Annex I: Practical Tips for Consumers

Buying tickets for a major event, such as a concert by a big artist, is often subject to difficulty and frustration. Here is a set of things to bear in mind and do.

Pre-event and before buying a ticket

1. When an event has been announced, check the date when the tickets go on sale.
2. Do some research to see if there is a fan club that provides preferential access to a pre-sale; is there a particular credit card or other membership scheme that enables preferential access? If so, consider subscribing to it.
3. There are 3 types of ticket seller: official ticket sellers chosen by event organisers to sell their tickets; secondary ticket sellers, who look for tickets and sell them on, often for more than the face value; and “fan to fan” sites where individuals can sell on tickets at a price they set. Some people use secondary or fan-to-fan sites because they cannot use a ticket they have bought or because they are trying to make a profit.
4. Set yourself a budget on what you are willing to pay for an event. You should factor in any additional costs such as travel and extra charges for the ticket; for example, booking charges, handling fees, postage etc.
5. You may want to see if there are alternative venues nearer to you to see the artist (for example, if you live in Milton Keynes, it may be quicker and easier and perhaps cheaper for you to go to the Birmingham concert than a London concert).
6. If you find that tickets are sold out, do not panic. Additional dates may become available so keep checking the internet. Later tickets may even be better than those sold earlier and cheaper nearer the day of the event.
7. It may also be worth checking one of the major commercial resellers, such as Stubhub, GETMEIN!, Seatwave and Viagogo, because tickets will become cheaper as the date of the event grows nearer, so do not panic buy and exceed your budget by immediately transferring to a different website. Remember that these sites also

add on fees towards the end of the transaction. Sometimes though, tickets can even be cheaper there even after adding on the fees.

8. Do not neglect the fan to fan secondary sites such as Twickets and Scarlet Mist; nearer the time of the event they may also have tickets available at or near to face value.
9. If possible, pay by a credit or debit card. Paying by card protects you if certain things go wrong (for example, non-delivery of a ticket from a ticket company)
10. Check the type of ticket you are buying; for example, if there is a restricted view or age restrictions (sellers are required to provide this type of information before you buy the ticket).

What to look out for and to be aware of:

11. Remember, as you should for making other purchases or dealings, that just because someone is selling on sites such as Gumtree and Facebook, does not mean they are honest. People may not be who they seem on such sites and you will have little protection.
12. If something in the purchase process strikes you as odd, particularly if it involves a site not mentioned above, then do not complete the purchase. You might be falling victim to a scam.
13. If you see tickets being sold when the event has not officially gone on sale, be suspicious; this may be a scam.
14. If the ticket seller is unknown to you, check if it has a website, a landline phone number that works and full postal address. Avoid using the site if there is only a PO Box address and mobile number, as it could be difficult to get hold of the seller after you have paid for the ticket.
15. Do try to read the terms and conditions of the ticket where possible. Sellers are required to provide buyers with key information in a clear and comprehensible manner.

If things go wrong:

16. By paying with credit card, credit card suppliers are held jointly responsible with suppliers for a breach of contract, e.g. failure to supply a ticket, or if the supplier has failed to fulfil an order because he has ceased trading.
17. If you think you have bought a ticket from a scam website, you should report this to the police through the Action Fraud website: www.actionfraud.police.uk. You may not get your money back, but you can try and prevent the scam site being used by others.
18. You can also contact the Citizens' Advice consumer helpline on 03454 04 05 06 (www.adviceguide.org.uk/). The helpline offers free information and advice to consumers and passes on complaints to Trading Standards where appropriate.

Annex J: Anonymised Arena Settlement Example

| | | | | | | | | | | | | | | | | | | | | | | | |
|------------------------------|--|--|-----------|-----------|---------------|----------|---------------------------|--------------------------------------|------------------|--|----------------|--|--|--|--|--|--|-----------|--|--|--|--|--|
| EXAMPLE ONLY | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | INVOICE No. | | | GTA 10000 | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| BRITANNICA ARENA | | | | | | | | INVOICE DATED | | | 1st April 2016 | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| Event: | | | A concert | | | | | V.A.T. REGISTRATION - xxxxxxxxxxx | | | | | | | | | | | | | | | |
| GROSS TICKET INCOME | | | | | 635,000.00 | | Customer name: A Promoter | | | | | | | | | | | | | | | | |
| Total No. of Ticket Sales | | | | | 10,000 | | Customer address: | | Promoter address | | | | | | | | | | | | | | |
| Total No. of Tickets - Comps | | | | | 250 | | | | | | | | | | | | | | | | | | |
| Total No. of Tickets Issued | | | | | 10,250 | | | | | | | | | | | | | | | | | | |
| TOTAL INCOME (NET OF VAT) | | | | | 529,166.67 | | | | | | | | | | | | | | | | | | |
| TICKET PRICES | | | | | £50; £65; £80 | | EXPENSES | | | | | | | | | | | £ | | | | | |
| AGENCY TICKET SALES | | | | | | | | | | | | | | | | | | | | | | | |
| Agency | | | Qty | £ | | P.R.S. @ | 3% | LP tariff applies | | | | | | | | | | 15,875.00 | | | | | |
| Victoria Tickets @ £80 | | | 1000 | 80,000.00 | | RENTAL | | Flat rental of £50,000 | | | | | | | | | | 50,000.00 | | | | | |

| | | | | |
|------------------------------|------|--------------|------------------------------|----------------------------------|
| Victoria Tickets @ £65 | 500 | 32,500.00 | BACKSTAGE EVENT RECHARGES | 5,400.00 |
| Victoria Tickets @ £50 | 500 | 25,000.00 | LOCAL MARKETING RECHARGES | 3,000.00 |
| Albert Tickets @ £80 | 600 | 48,000.00 | NET EXPENSES -TOTAL | 74,275.00 |
| Albert Tickets @ £65 | 400 | 26,000.00 | VAT (20%) | 14,855.00 |
| Wilhelm Secondary @ £80 | 100 | 8,000.00 | GROSS EXPENSES - TOTAL | 89,130.00 |
| Wilhelm Secondary @ £65 | 50 | 3,250.00 | CASH ADVANCE | 5,000.00 |
| VIP Gold Gods @ £80 | 50 | 4,000.00 | * AGENCIES | 226,750.00 |
| TOTAL | 3200 | 226,750.00 | TOTALS | 320,880.00 |
| Promoter's Share | | | PROMOTER'S REPRESENTATIVE | |
| Tickets sold - Gross | | 635,000.00 | | |
| Total Recoveries | | (320,880.00) | BRITANNICA ARENA, GEORGETOWN | Date Paid into the Promoter Bank |
| Payable by Venue to Promoter | | 314,120.00 | | |

Notes on illustrative Settlement example for an anonymised show at an anonymised fictitious arena:

1. The settlement is done between the promoter and the venue, as these are the contracting parties.
2. The gross income figure is the total of the gross ticket price multiplied by the number of tickets sold at face value. In this example I have assumed 2,000 tix x £80; 5,000 tix sold at £65; 3,000 tix sold at £50. This calculation is based on the face value of the ticket from the promoter. Some “ticket packages” such as hospitality packages and VIP Premium (Gold Gods) are sold for a higher price but only the face value of the ticket is included in the gross income.
3. Total No. of Ticket sales are those tickets sold at face value. Comps (complimentary tickets) include promoter comps; venue comps and any “essential companion” (sometimes referred to as “free carer”) seats that the promoter gives away to disabled customers who would otherwise be unable to attend the event without a companion, who receives a free ticket. The disabled customer’s ticket is charged for and is included in the gross income.
4. Some Arenas have tickets for shows that are “off manifest”. This means that the sale price of the ticket (usually within a hospitality package or debenture/club seat arrangement) is retained by the venue and not passed on to the promoter in the gross income. These “off manifest” arrangements are contractual between promoters and venues. Arenas may deal with hospitality arrangements in other ways – such as including hospitality suites within the manifest and paying over the face value of the ticket to the promoter in the gross income figure. In such an arrangement, the premium paid above face value by customers is retained by the arena to pay for the food / drinks / private facilities etc. that are included in the package.
5. Agency ticket sales are allocated by the promoter to agencies that they partner with. AEG partner with AXS, SJM partner with See and Live Nation partner with Ticketmaster but there are many other smaller ticketing agencies that may be included and the ticketing arrangements are rarely exclusive – particularly if a show is not selling out. Most Arenas have a minimum percentage of the house that they retain, which restricts the number of tickets that promoters can allocate to agencies.
6. “Wilhelm Secondary” is a secondary agent receiving an allocation of tickets from the promoter in this example. This does not ALWAYS happen, but I received off-the-record evidence that allocations of primary tickets to secondary agents has occurred and still does occur. The face value of the ticket is shown in the gross income, not the actual sale/resale value by the secondary agent, which of course may be higher than the face value.
7. VIP Gold Gods as a premium ticket is accounted for in the settlement at face value, irrespective of what the package is sold for.

8. PRS – is calculated in this example at the LP tariff that applies to 90%+ of Arena shows, currently 3%. The PRS tariff is calculated on 3% of the net income (after VAT) from ticket sales – although this net income may understate what the tickets are initially sold for if allocations are given to secondary agents.
9. Rental – can be a flat figure, a per-ticket arrangement or a % of net income. May have a minimum floor or a cap if variable.
10. Backstage Event recharges – these are recharges to the production/promoter for services provided that are not included in the rental. Every Arena is different in what is/is not included in the rental, for example riggers, backstage security, fork lift truck hire, backstage catering facilities (crew catering), IT, phones etc.
11. Local Marketing Charges – often venues will offer local marketing opportunities for promoters to buy into that are recharged by the venue to the promoter – for example external advertising banners on the building or on local buses.
12. Cash advance – promoters often take a cash advance in order to settle out of pocket expenses for the production / crew / caterers.
13. In terms of the final settlement payment, the venue deducts the expenses, cash advance and agency sales from the total gross sales and calculates the final payment to be made to the promoter. Most venues agree the financial details on the night and both parties sign it off.
14. There are times when additional charges can be applied post-settlement, for example if the venue is damaged by the load-out or if the show over-runs and incurs an overrun penalty charge.
15. The promoter then collects the outstanding agency ticket monies directly from the ticketing agencies.
16. The Venue Settlement payment is made usually within a week of the show.
17. Merchandise arrangements are done entirely separately to the main promoter settlement.

Annex K: Overview of Relevant Consumer Legislation

1. This Annex sets out further details of the key pieces of legislation that are relevant to secondary ticketing. Published guidance is also available and a list of this can be viewed in Annex N to this report.

Chapter 5, Part 3 Consumer Rights Act 2015: Secondary Ticketing

2. The secondary ticketing provisions in the CRA came into force on 27 May 2015. They are contained in sections 90 to 95 inclusive (Chapter 5 of Part 3). Further information regarding sections 90 to 93 inclusive is set out below and has been taken in part from BIS's Consumer Rights Act 2015 Secondary Ticketing Guidance for Business¹⁰⁵.
3. Section 94 CRA sets out the requirement for this review and is addressed in more detail in the Context of the Review. Section 95 CRA sets out definitions used in Chapter 5, Part 3 CRA and these are addressed below to the extent that they are relevant.

Duty to provide information about tickets (section 90 CRA)

4. Section 90 of the CRA sets out information about tickets offered for sale that must be provided to buyers. This does not preclude additional information being required under other legislation (such as the CPRs and CCRs) and traders should consult this legislation to ensure they comply with all relevant information requirements.

¹⁰⁵

https://www.businesscompanion.info/sites/default/files/The%20sale%20and%20resale%20of%20tickets_BIS_GUIDANCE_SEP15.pdf

5. As regards a ticket offered for sale on a secondary ticketing facility, four specific pieces of information must be given by both the seller of the ticket and the operator of the relevant secondary ticketing facility:
- that which is necessary to identify the location to which the ticket provides access – such as the particular seat or standing area of the venue. In most cases this will mean the block in which the seat or relevant area is located and the row and number of the seat, but it could include the name of the relevant area of the venue (e.g. “stalls”), or other identifier if used.
 - any restrictions that apply to the category of person who can use the ticket. For example, the ticket might be for a specific area reserved for wheelchair users and their helpers, or it might only be able to be used by those within a certain age range.
 - the face value of the ticket. This is the price printed on the ticket itself. This will likely be the price at which ticket was originally bought, but in some cases the price will vary according to the time of purchase (e.g. because a discount is available for a limited period). In such cases, where the ticket is held by the seller they should refer to the price where printed on it and, failing that, quote the price paid by the original purchaser.
 - details of certain connections the seller has with either the online facility on which they are selling, or the organiser of the event for which the ticket is being sold. For example, if the seller is an employee or operator of the facility being used to sell the tickets, they must give the buyer that information. Similarly, where the seller is an organiser of the event, such as the promoter or producer, this information must be given.
6. In each case, the seller only has to provide this information where it is applicable to them or the ticket they are selling. For example, where a ticket is for a standing section of a venue, the seller does not have to give a seat number. Where the ticket is for a seat, but the seller has not yet been told what that seat is, (e.g. because the venue lay out has not yet been finalised) they cannot give a seat number, but that information should be provided to the buyer if it subsequently becomes available before the ticket has been resold.

7. The information must be provided in a clear and comprehensible manner and before the buyer purchases the ticket. For example, the information would be clearly displayed in a legible font before the buyer clicks on a button marked “confirm purchase”. However, the seller should take care not to provide the information in such a manner that it makes the ticket open to fraud. For example, publishing a picture of the ticket complete with barcode may make it easy for a fraudster to duplicate the ticket which would be counter to the intent of the legislation.

Prohibitions on blacklisting or cancelling (section 91 CRA)

8. In general, the Government believes it is important for fans to be able to resell tickets that they purchased and do not want to use. By the nature of online secondary ticket platforms, information contained within a sales listing is publicly available. Potentially, therefore, information provided for the benefit of prospective buyers under Section 90 CRA could be used by an event organiser to cancel a ticket or “blacklist” a seller (blacklisting includes both preventing a person from acquiring a ticket for an event or restricting that person’s opportunity to acquire such a ticket).
9. A requirement to provide detailed information that may increase the likelihood of the seller and/or purchaser suffering immediate or future detriment would go against the consumer protection objectives of the CRA. Section 91 CRA therefore provides that an event organiser cannot cancel a ticket merely because it is re-sold or offered for re-sale, nor may an organiser blacklist a person who resells or offers to resell a ticket. This restriction (on cancellation and blacklisting) will always apply unless the event organiser has met two conditions:
- It must have been clearly set out as a term of the contract under which the original buyer purchased the ticket from the event organiser that cancellation of the ticket and/or blacklisting of the seller may occur as a consequence of that ticket being resold or offered for resale.
 - The term of the contract under which the original buyer purchased the ticket from the event organiser must not be unfair. This is a significant requirement. Contract law ordinarily allows a purchaser to transfer to someone else what they have

bought. Terms that prohibit resale are considered to be open to scrutiny for fairness and therefore must meet the principles of fair and open dealing, ensuring that their substance, expression and use respects consumers' legitimate interests. Those terms which are not fair cannot be enforced against a consumer.

10. The fairness of terms in contracts between traders and consumers is assessable under Part 2 CRA. The CMA has produced guidance on these rules¹⁰⁶. Unfair terms used by traders in contracts with consumers are not legally binding on consumers and, in general, a term that seeks to prohibit a consumer's ability to resell a ticket is considered to be potentially unfair.
11. This prohibition applies to actions taken by event organisers after Section 91 CRA came into force (on 27 May 2015). The ticket in question may have, however, been re-sold or offered for re-sale before that time.
12. Local authority Trading Standards Services, the CMA and other enforcers have powers to stop traders from using unfair terms.
13. The prohibitions set out in the CRA do not preclude an event organiser from seeking to cancel a ticket or blacklist a seller for reasons other than re-sale; for example, because they have information or evidence of theft or fraud. Such action may, however, remain open to assessment of fairness under Part 2 CRA.
14. Where an event organiser cancels a ticket, they should consider advising the original purchaser of the fact and of the grounds upon which cancellation has occurred.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf

Duty to report criminal activity (section 92 CRA)

15. Where the operator of a secondary ticketing facility is aware of “criminal activity” (see below for further details) in relation to the re-sale of tickets that has taken or is taking place on that facility, a relevant report must be made to the police and to the event organiser.
16. As to what constitutes criminal activity, the section refers to persons using the secondary ticketing facility in such a way that offences have been or are being committed. It therefore covers any criminal offences under the law of any part of the UK. However, the offence must relate to the re-sale of tickets to be covered by this section. It is envisaged that it will be particularly relevant to offences under the Fraud Act 2006 and the Theft Act 1968.
17. The report must be made to a police force in the UK; however, the operator should consider whether there is a particular force to which it would be most appropriate to address the report. Where the issue is one of fraud or e-crime, operators should consider reporting the matter to Action Fraud, the UK's national fraud and internet crime reporting centre. The report made to the police should include details of the offence and the offender (where the latter is known to the operator).
18. Where reporting criminal activity, operators should be mindful of the need not to prejudice the investigation of an offence. This might mean that, where an operator has reason to believe that information about the reported criminal activity may pass to the alleged perpetrator if a certain organiser is informed, a report is first made to the police and advice sought as to whether to inform some or all of the organisers. An operator is only obliged to report criminal activity it becomes aware of after these provisions came into force on 27 May 2015, though this would include activity which is ongoing and continuing on or after that date.

Enforcement (section 93 CRA)

19. Enforcement of the secondary ticketing provisions is by local authority Trading Standards Services (referred to in the CRA as a local weights and measures authority) in Great Britain and by the Department for Enterprise, Trade and Investment in Northern Ireland.
20. These enforcement authorities may levy fines of up to £5,000 in respect of any breaches of these provisions. Depending on the nature of the breach, the fine might be imposed on businesses or private individuals. The enforcer will assess on a case by case basis what constitutes a breach (e.g. failure to provide information on each ticket or a single listing) and the appropriate size of any fine.
21. The enforcement authorities' abilities to impose fines are limited, as the CRA recognises that there might be mitigating circumstances in relation to any breach. For example, no fine should be imposed where the breach was due to a mistake, an accident, reliance on information provided by another person, somebody else's actions or another cause beyond the person's control and where the person in question taken all reasonable precautions and has exercised all due diligence to avoid the breach. It is envisaged that these provisions might cover, for example, a situation where a secondary ticketing facility has published false information about a resale ticket in reliance on information provided by the seller (providing it had taken reasonable steps to ensure the information was correct).
22. The BIS Consumer Rights Act 2015 Secondary Ticketing Guidance for Business on secondary ticketing envisages that reasonable steps might include:
- drawing the attention of sellers to their legal obligations;
 - cross checking ticket sellers against available lists of those known to have previously committed fraud;
 - confirming that date and location for the event to which tickets are offered is in line with the official details advertised;
 - confirming that details such as the stadium block number provided actually exists; or

- checking for duplicate tickets (e.g. those with identical details) being sold.

The Consumer Protection from Unfair Trading Regulations 2008 (“CPRs”)

23. The CPRs, which implement the Unfair Commercial Practices Directive¹⁰⁷, prohibit traders from engaging in unfair commercial practices against consumers. The CPRs apply across all business sectors and set out a framework for how businesses must deal with consumers. They set out broad rules outlining when commercial practices are unfair, encompassing misleading action, misleading omissions and aggressive practices. They also list 31 banned commercial practices that will be considered unfair in all circumstances. For a practice to be unfair under the CPRs, it must materially distort, or be likely to materially distort, the economic behaviour of the average consumer.
24. The CPRs have been amended to give consumers a new private right to bring their own civil actions for certain breaches.
25. The courts do not appear to have considered the CPRs in the context of online secondary ticketing, so the precise application of this legislation remains untested in relation to practical issues experienced by consumers in this area. As such, it is not possible to state to what extent its provisions would cover some of the key problem scenarios identified as part of this review. It is clear, however, that the CPRs provide protection for consumers in addition to the CRA.
26. Enforcement of the CPRs is primarily by local authority Trading Standards Services. Alleged breaches should be reported in the first instance through the Citizens' Advice consumer helpline for referral to Trading Standards to take appropriate action where justified. However, as noted below, the CMA has also taken action in respect of the CPRs using its powers under Part 8 Enterprise Act 2002, securing undertakings from the major secondary ticketing platforms.

¹⁰⁷ (2005/29/EC): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:0039:EN:PDF>

The Consumer Contracts (Cancellation, Information and Additional Charges) Regulations 2013 (the “CCRs”)

27. The CCRs implement, in part, the Directive on Consumer Rights¹⁰⁸. They require that certain information must be given when goods, services or digital content are sold by a trader to a consumer, including sales concluded at a distance (e.g. online).
28. This information includes the main characteristics of goods, services or digital content; the identity, address and contact details of trader; the total price of goods, services or digital content inclusive of taxes; details of all additional delivery charges and other costs; arrangements for payment and delivery etc. This list is not exhaustive.
29. There is a certain amount of overlap between the CRA secondary ticketing provisions and the CCRs. This is because both pieces of legislation implement relevant provisions of the Directive on Consumer Rights and so require specified information to be provided to buyers (under the CRA) or consumers (under the CCRs) when entering into contracts. The main difference is that the CRA secondary ticketing provisions were formulated with tickets in mind, so refer to ticketing-specific concepts such as seat numbers and standing areas. The CCRs do not do this. The CRA secondary ticketing provisions also require the face value of the ticket to be provided, so that buyers can compare the original price of the ticket with the resale price. This is not the case under the CCRs, which require the total price of the goods and services to be provided (plus details of other additional costs/charges).
30. The CCRs also set out how pre-contractual information should be given to consumers and provides a right for consumers to change their minds and obtain a refund when buying goods or services at a distance. This right does not apply to tickets, however.
31. Like the CPRs, the CCRs concern transactions between “traders” and “consumers” and might not, therefore, cover individual resellers who are not acting in the course of business. In that respect, the CRA secondary ticketing provisions offer potentially wider protection for consumers, given that they impose obligations on all persons reselling tickets (whether individuals or businesses).

¹⁰⁸ Directive 2011/83/EC of the European Parliament and of the Council on consumer rights: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0083&rid=1>

Part 2 Consumer Rights Act 2015: unfair contract terms

32. Part 2 CRA updates the rules pertaining to contract terms that can be considered “unfair”. Together with Part 1 CRA, it consolidates and replaces the Unfair Terms in Consumer Contracts Regulations 1999 (the “UTCCRs”) and relevant provisions of the Unfair Contract Terms Act 1977 (UCTA). In this way, the CRA gives effect in the UK to the Unfair Contract Terms Directive¹⁰⁹. It applies to contracts entered into, and relevant notices issued, on or after 1 October 2015. Consumers entering into contracts with traders before 1 October 2015 remain protected by UCTA and the UTCCRs in relation to those contracts.
33. A term is unfair if it causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer. The courts will look at the subject matter of the contract and the circumstances existing when the term was agreed. The courts cannot, however, assess whether or not a term is fair if the term relates to the main subject matter of the contract or if it would be assessing the appropriateness of the price, as long as the term was transparent and prominent. In other words, it would not necessarily be open to the courts to find that the price of a resale ticket was inappropriate just because the price was high. In contrast, a contract term purporting to ban the resale of a ticket could be assessed by the courts for fairness and, if it was found to be unfair, a seller would be prohibited under s.91 CRA from cancelling the ticket or blacklisting the reseller.
34. Generally, the onus is on consumers to bring claims to enforce their contractual rights. Enforcement bodies might take action where there is an overlap with consumer legislation that provides for such action, but this will not always be the case. Consumers’ ability to pursue claims in contract law will always depend on the precise circumstances of the case.
35. The CMA has published detailed guidance on unfair contract terms¹¹⁰.

¹⁰⁹ Council Directive 93/13/EEC on unfair terms in consumer contracts: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31993L0013&from=EN>

¹¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf

Annex L: History of Events Ticketing Legislation

1. Prior to the introduction of the CRA secondary ticketing provisions in 2015, specific legislation governing the re-sale of tickets was limited to the Price Indications (Resale of Tickets) Regulations 1994 (the “Resale Regulations”), the Criminal Justice and Public Order Act 1994 (the “1994 Act”) and the London Olympic Games and Paralympic Games Act 2006 (the “2006 Act”).
2. The Resale Regulations required that the face value of the ticket had to be made clear to the consumer at the point of sale, as well as any seat location details and any other information provided on the ticket. However, these Regulations ceased to have effect following the introduction of the CPRs.
3. The 1994 Act relates to the unauthorised resale of tickets for football matches in England and Wales and makes it an offence for an unauthorised person to sell or otherwise dispose of tickets for designated football matches¹¹¹. The introduction of this legislation was prompted by the need to ensure public order was maintained and constrain the activities of ticket touts outside football grounds so that fans did not get tickets in areas reserved for rival fans. The 1994 Act was subsequently reinforced to cover internet sales¹¹².
4. The 2006 Act provided that it was a criminal offence to tout tickets for the 2012 Olympic and Paralympic Games without written authorisation from the London Organising Committee¹¹³.

¹¹¹ Section 166, Criminal Justice and Public Order Act 1994.

¹¹² Section 166A, Criminal Justice and Public Order Act 1994.

¹¹³ Section 31, London Olympic Games and Paralympic Games Act 2006

Annex M: Complaints and Current Enforcement Action

Complaints to Citizens' Advice

1. Citizens' Advice has been collating information about the volumes and types of complaints received about tickets before and after 27 May 2015, being the date when the CRA secondary ticketing provisions came into force. Complaints decreased by 54% between November 2014 and November 2015, which might suggest the CRA has had some beneficial effect. There were 202 complaints received before May 2015 and 92 cases received after. Some 88% of calls to Citizens' Advice were from ticket buyers rather than sellers.
2. As borne out by other evidence received, the highest number of complaints related to concerts. Generally, the top issues for buyers of secondary tickets (for all types of events) included:
 - tickets not being received (22% of cases);
 - the cost of the ticket compared to its face value (21% of cases); and
 - difficulties in obtaining full refunds or any refunds (16%).
3. Given the time lag between the event and report, not all of these complaints necessarily reflect the effectiveness of the CRA. Perversely, the prevalence of cases involving scams was higher after May 2015 (20% of cases) than before (11% of cases). However, for the top three complaints issues identified above, there have been clear drops in the numbers of cases. The extent to which this decrease is due to the new legislation cannot readily be established. Citizens' Advice observed that, albeit they received a relatively low number of complaints about location or lack of seat number, the complaints regarding these issues declined at a lower rate.

4. These complaints have been logged and considered further by the CPP to inform future prioritisation. The CPP's Update Report 2016¹¹⁴ indicates ticketing scams and re-sales as one of its areas of concern for 2016 and will report on progress in its 2017 report.

¹¹⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518512/bis-16-162-consumer-protection-partnership-update-report.pdf

Annex N: Published Guidance

1. My report has already noted the existence of a number of different pieces of legislation relevant to the area of secondary ticketing, as well as the potential difficulties for some parties in navigating this legal framework. Various bodies have published guidance that is designed to help ticket sellers understand their obligations and consumers understand their rights and parties should consult this wherever possible. Key sources of information are set out below:

- BIS Consumer Rights Act 2015: Secondary Ticketing Guidance for Business, September 2015
https://www.businesscompanion.info/sites/default/files/The%20sale%20and%20resale%20of%20tickets_BIS_GUIDANCE_SEP15.pdf
- CMA's Unfair Contract Terms Guidance, 31 July 2015
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf
- CMA's open letter to secondary ticketing websites, 16 March 2015
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413278/Open_letter_to_websites.pdf
- CMA's open letter to secondary ticket business sellers, 16 March 2015
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413257/Open_letter_to_business_sellers.pdf
- CMA's 60-second summary on secondary ticket websites: information for consumers
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409554/Secondary_ticketing_v2.pdf

2. Much of this guidance is aimed at businesses, with a viewing to helping them comply with their legal obligations. My view is that consumers are clearly in need of further help when looking to purchase tickets. I have, therefore, produced some practical tips for consumers (Annex I), which I hope will prove a useful addition to the existing guidance in this area.

Annex O: Enterprise Act 2002

1. In addition to the enforcement provisions contained within individual pieces of consumer legislation, Part 8 of the Enterprise Act 2002 provides enforcers with additional tools. These tools are designed to tackle infringements of domestic or EU consumer legislation, where such infringements pose harm to the collective interests of consumers. Part 8 has been specifically extended so that the CRA secondary ticketing provisions are included in the definition of “domestic infringement”.
2. Prior to the introduction of the CRA, the main tool available to the CMA and other specified enforcers under Part 8 was an enforcement order to prevent unlawful behaviour. Alternatively, enforcers could obtain undertakings from traders that they would not engage in unlawful behaviour. The CMA’s use of undertakings in relation to secondary ticketing is discussed in Chapter 2.
3. The CRA amended Part 8 of the Enterprise Act 2002 by adding to the range of the tools – with the additional tools through enhanced consumer measures (“ECMs”). They are:
 - Redress measures or schemes (providing remedies for consumers who have suffered loss);
 - Compliance measures (aimed at traders to reduce the risk of repeat behaviour); and
 - Consumer information measures (giving consumers information about traders’ compliance history so that they make informed choices).
4. The intention behind ECMs is that they give enforcers of consumer law greater flexibility to get better outcomes for consumers who have been the victims of a breach of the law. The range of outcomes provides for the possibility of positive changes to business practices to the wider benefit of consumers, rather than merely targeting past

behaviours.¹¹⁵ ECMs are still very new and, to date, these provisions have not been used in relation to tickets. They may, however, prove useful for enforcers seeking to tackle breaches of law in relation to secondary ticketing.

¹¹⁵ Enhanced Consumer Measures, Guidance for enforcers of consumer law, May 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/431158/bis-15-292-guidance-for-enforcers-of-consumer-law.pdf

Annex P: Glossary

| | |
|---------------|--|
| 1994 Act | Criminal Justice and Public Order Act 1994 |
| 2006 Act | London Olympic Games and Paralympic Games Act 2006 |
| ABTA | The Travel Association |
| AELTC | All England Lawn Tennis & Croquet Club Limited |
| APPG | All-Party Parliamentary Group |
| ASTA | Association of Secondary Ticketing Agents |
| BIS | Department for Business, Innovation & Skills |
| Bot | a software application that runs automated tasks (scripts) over the Internet |
| Botnet | a number of Internet-connected computers communicating with other similar machines in which components located on networked computers communicate and coordinate their actions |
| CCAS | The Consumer Codes Approval Scheme |
| CCRs | The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 |
| CISP | Cyber-Security Information Sharing Partnership |
| CMA | Competition and Markets Authority |
| CMA 1990 | The Computer Misuse Act 1990 |
| CMS Committee | Culture, Media and Sport Select Committee |
| CPA | Concert Promoters Association |
| CPP | Consumer Protection Partnership |
| CPRs | The Consumer Protection from Unfair Trading Regulations 2008 |
| CRA | Consumer Rights Act 2015 |
| DCMS | Department for Culture, Media and Sport |
| DDoS | Distributed Denial-of-Service |
| ECB | England and Wales Cricket Board |
| EUSTA | European Union Secondary Ticketing Association |
| HMRC | HM Revenue and Customs |
| ICPEN | International Consumer Protection and Enforcement Network |

| | |
|-----------------------|--|
| ID | Identity |
| IOC | International Olympic Committee |
| MMF | Music Managers Forum |
| NAA | National Arenas Association |
| NFIB | National Fraud Intelligence Bureau |
| NTG | National Tasking Group |
| NTSIT | National Trading Standards Intelligence Team |
| NYAG | Office of the New York Attorney General |
| OFT | Office for Fair Trading |
| Resale Regulations | Price Indications (Resale of Tickets) Regulations 1994 |
| RFU | Rugby Football Union |
| SIC | Standard Industrial Classification |
| SOC | Standard Occupational Classification |
| SEO | Search engine optimisation |
| SOLT | The Society of London Theatre |
| STAR | The Society of Ticket Agents and Retailers |
| TM | Ticketmaster |
| UCTA | Unfair Contract Terms Act 1977 |
| UEFA | Union of European Football Associations |
| UTCCRs | Unfair Terms in Consumer Contracts Regulations 1999 |
| WRU | Welsh Rugby Football Union |

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